United Nations A/65/318

General Assembly

Distr.: General
20 August 2010

Original: English

Sixty-fifth session
Item 87 of the provisional agenda*
The rule of law at the national and international levels

Strengthening and coordinating United Nations rule of law activities

Report of the Secretary-General

Summary

This is the second annual report of the Secretary-General on strengthening and coordinating United Nations rule of law activities, an ongoing and critical process for the Organization.

It builds on the principal landmarks reached in this process so far: the Millennium Declaration (see resolution 55/2); the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616); the 2005 World Summit Outcome (see resolution 60/1); the report of the Secretary-General on enhancing United Nations support for the rule of law (A/61/636-S/2006/980 and Corr.1) and the establishment of new system-wide arrangements consisting of the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit of the Executive Office of the Secretary-General, and a system of non-exclusive lead entities for various rule of law subsectors; the inventory of United Nations rule of law activities (see A/63/64); the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities (A/63/226) and the first annual report of the Secretary-General on strengthening and coordinating United Nations rule of law activities (A/64/298).

With regard to the rule of law at the international level, the report provides insights into emerging mechanisms and practices that promote the effective implementation of international law by Member States. In the past year, judicial and non-judicial mechanisms that ensure accountability have proved to be an important tool in the international community's response to impunity.

* A/65/150.

10-49099 (E) 300910

Please recycle

The report illustrates key achievements of United Nations support to States at the national level over the past year as well as critical gaps and challenges. There continues to be progress towards a more comprehensive and joint approach among United Nations entities to support the rule of law in line with national priorities and plans.

Efforts to ensure the overall quality, coordination and coherence of United Nations engagement by the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General, continue to drive the Organization towards more strategic and effective rule of law assistance. The task remains for Member States, the United Nations and other partners to unite around common approaches and collective action towards strengthening the rule of law at the national and international levels.

Submitted pursuant to General Assembly resolution 64/116, the present report highlights the ongoing implementation of recommendations made in the 2008 and 2009 reports (A/63/226, paras. 76-78 and A/64/298, para. 97), and new ways and means to strengthen and coordinate efforts.

Contents

		Page
I.	Introduction	3
II.	Fostering the rule of law at the international level	4
	A. Codification, development, promotion and implementation of an international framework of norms and standards	4
	B. International and hybrid courts and tribunals and non-judicial dispute resolution mechanisms	7
	C. Non-judicial accountability mechanisms	9
III.	United Nations approach to the rule of law at the national level	10
	A. Framework for strengthening the rule of law	10
	B. Addressing critical challenges	14
IV.	Overall coordination and coherence	17
	A. Providing guidance and implementing the joint strategic plan	17
	B. Reaching out system-wide	18
	C. Measuring effectiveness and evaluating impact	19
	D. Expanding partnerships	20
	E. Strengthening the rule of law in the Organization	21
V.	Cultivating a just, secure and peaceful world governed by the rule of law	22
Annex		
	Views expressed by Member States	23

I. Introduction

1. The United Nations is engaged in an ongoing process to promote the rule of law at the national and international level and to deepen its expertise and capacity. The Organization has set a broad and ambitious agenda in this area, which is not easily realized and is often underestimated. The present annual report provides an opportunity to track progress made towards the realization of this agenda and to reflect on the current challenges.

2. As the 2005 World Summit Outcome underlines (see resolution 60/1), an international order based on the rule of law is essential for peaceful coexistence and cooperation among States. The Organization is refining its understanding of the rule of law at the international level, and recent attention to its importance by the General Assembly and Security Council is most timely and welcome.

3. International judicial and non-judicial mechanisms that promote compliance with international law, prevent conflict and combat impunity are increasingly effective but require further strengthening. Recent experiences underscore the importance of international criminal justice measures and commissions of inquiry as legal tools in a new age of accountability. They also throw into sharp relief the unavoidable necessity of strengthening the rule of law at the national level in line with international norms and standards.

4. Narrowing the gap between international norms and standards and implementing them effectively at the national level remains a great challenge. Mechanisms that monitor and promote compliance of States with international law are increasingly harmonized to support the effective domestic implementation of standards and are linked with technical assistance to help States develop their national laws and practices to fulfil their obligations. The engagement of the United Nations in countries in the area of rule of law thus remains crucial.

5. The United Nations undertakes activities aimed at assisting national authorities to strengthen the rule of law in more than 125 Member States in every region of the world and in all contexts, from conflict prevention to peacekeeping to development. In at least 60 countries, a minimum of three United Nations entities are engaged in such support. Five or more entities are carrying out such activities in more than 35 countries, 17 of which host United Nations missions engaged in peacemaking, peacekeeping and peacebuilding. In line with the common approach of the United Nations, the trend is towards joint and comprehensive initiatives by key operational rule of law entities, particularly in conflict and post-conflict States.

6. Yet, the United Nations continues to face challenges to the effectiveness of its rule of law assistance, owing in no small part to the limited human and financial resources available. While gaps persist in such engagement, steps are being taken to enhance the approaches to complex issues, such as land tenure, transitional justice, transnational organized crime and corruption, sexual violence and informal justice systems. Addressing those challenges remains critical to the realization of the core objectives of the United Nations, whether in peace and security, human rights protection or sustainable progress and development.

7. The Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General and supported by the Rule of Law Unit, continues to make progress in system-wide strategic coordination and coherence of the Organization's

engagement. Advances have been made in streamlining policy and guidance, supporting coherent action in countries and expanding partnerships with a view to placing national perspectives at the centre of rule of law assistance. Overall efforts in this field must also enhance adherence to the rule of law by the United Nations itself in its operations and practices.

8. The present report is submitted pursuant to resolution 64/116, in which the General Assembly requested the Secretary-General to submit an annual report on United Nations rule of law activities, in particular the work of the Group and the Unit, with regard to improving the coordination, coherence and effectiveness of rule of law activities. Annexed to the report are the views of Member States provided to the Secretary-General on their laws and practices in the implementation of international law. Information on this subtopic is provided throughout the report in accordance with the resolution.

II. Fostering the rule of law at the international level

9. In 2008, I emphasized that in fulfilling its responsibilities, the United Nations must work towards the universal application at the international level of the Organization's definition of the principle of the rule of law. An important step to this end was the call by the General Assembly for the continuation of the dialogue with Member States, organized by the Rule of Law Coordination and Resource Group and the Rule of Law Unit, with a view to fostering the rule of law at the international level (resolution 64/116). This dialogue should continue.

10. It is also welcome that the Security Council, under the Presidency of Mexico, held an open debate on the promotion and strengthening of the rule of law in the maintenance of international peace and security on 29 June 2010. Thirty-four States and the European Union made statements, highlighting the Council's special role and responsibility to further integrate the rule of law in its daily work and to strengthen its own adherence to the rule of law.

A. Codification, development, promotion and implementation of an international framework of norms and standards

11. The corpus of international norms and standards developed under the auspices of the United Nations remains, without doubt, one of the Organization's greatest achievements. It is a sophisticated international legal framework that speaks to all challenges to humanity, from State-to-State relations to human dignity and development. Essential aspects of the rule of law at the international level are the codification and progressive development of international law, the implementation of international legal obligations and compliance with those obligations whether they arise from treaties or from customary international law. The annual treaty event held during the high-level segment of the General Assembly has proved to be a catalyst, encouraging the wider participation of Member States in the multilateral treaty framework. Since 2000, 11 treaty events have generated 1,549 treaty actions.

12. The United Nations supports the development of international law, binding and non-binding norms and the mechanisms that monitor their application and State compliance. A gap continues to exist between those norms and their full application

at the national level. To help Member States develop their laws and practices to implement international law, the Organization provides technical assistance and programming. Monitoring and follow-up mechanisms of States related to their international obligations are increasingly being harmonized and linked more effectively to the development of good practices and technical assistance provided to States by the United Nations system. This is true in various fields of international law, including treaty law, commercial law, the law of the sea (see, e.g., A/65/69), labour law, human rights law, humanitarian law and criminal and anti-corruption law, to name but a few.

13. In the field of human rights, through the Universal Periodic Review, established in 2006, the Human Rights Council reviews the fulfilment of human rights obligations by all Member States and, with the support of the international community, States endeavour to implement the recommendations from the review. By the end of 2011, all 192 Member States will have been reviewed.

14. The treaty bodies of the eight core human rights treaties developed guidelines for State party reporting to harmonize work methods and make procedures more accessible to national actors.[1] Five treaty bodies developed follow-up procedures for their concluding observations that involve identifying priority concerns, for which they seek the State party's response on implementation.[2] More and more, the concluding observations influence technical assistance programming by the United Nations system to support States to follow up on treaty body recommendations. Treaty bodies also issue decisions on individual complaints against treaty violations, which, along with general comments, provide detailed guidance for the interpretation and implementation of obligations under international human rights law.

15. The international human rights obligations of States are increasingly linked to the fulfilment of their core development objectives. For example, the Habitat Agenda links human settlements development to the realization of, in particular, the right to adequate housing. Similarly, the Programme of Action of the International Conference on Population and Development frames support to States for the development of policies, programmes and laws on the intersection of population, reproductive health and gender equality to achieve the Millennium Development Goals and related international human rights.

16. Experience in this field indicates that an incremental approach of policy and institutional development by Member States is most effective in promoting the implementation of international standards. Enforcement of binding rules and domestic ratification of legal instruments are often undermined by a lack of capacity and institutional instability in States, particularly those in conflict or crisis. Capacity-building and the development of local and regional practices,

[1] To date, guidelines have been finalized by the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on Migrant Workers and the Convention on the Rights of Persons with Disabilities, complementing the guidelines for the common core document (HRI/GEN/2/Rev.6) (35 common core documents had been received by June 2010).

[2] The Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination.

methodologies and policies, as well as the formalization of customary practices, can ultimately be translated into national policy and legal frameworks.

17. Despite the comprehensive legal framework, the effective implementation of laws on refugees and, in particular, statelessness, is hampered by relatively low levels of adherence by States to the relevant treaties.[3] Problems having to do with State capacity and resources, as well as a lack of commitment by some States to integrate international obligations into domestic law, are additional obstacles. The conclusions of the Executive Committee of the Office of the United Nations High Commissioner for Refugees (UNHCR) have proven a particularly effective soft-law instrument for addressing normative gaps, although many States are not able to provide detailed information on their implementation.[4] Going forward, greater dissemination of the best implementation practices should help to address those challenges.

18. Recent international normative regimes in the criminal justice field provide insight into emerging practices and mechanisms that promote the implementation by States of international law. States that ratify the Convention against Transnational Organized Crime and the Protocols thereto commit to the creation of multiple domestic criminal offences and the adoption of sweeping frameworks for cooperation among States on extradition, mutual legal assistance and law enforcement. A legislative guide, model laws and an assessment checklist on implementation were developed to assist them.

19. A peer review mechanism just established by the Conference of States Parties to the United Nations Convention against Corruption links the monitoring of implementation to targeted technical assistance and the exchange of good practices and experiences in implementation. Reviews will be based on State self-assessment, using a comprehensive checklist, and optional country visits and reports. In addition, the Technical Guide to the United Nations Convention against Corruption was published in 2009.

20. The tripartite structure of the General Conference of the International Labour Organization (ILO), involving Governments, employers and workers, links the development of international norms with the examination of the application of labour standards in national laws and practices. The ILO Constitution requires all Member States to bring the conventions and recommendations adopted by the Conference to the attention of the competent national authorities and to report on ratified conventions as well as non-ratified conventions and recommendations. The international norms and the supervisory bodies in the labour field further shape ILO programmatic support in countries.

21. Uniform interpretation of the law is the key to the harmonization and effective implementation by States of international private law. Model laws have proven to be effective and flexible tools in such areas as international dispute resolution mechanisms, cross-border insolvency, e-commerce and public procurement. For example, the provisions on the recognition and enforcement of awards in the United Nations Commission on International Trade Law (UNCITRAL) Model Law on

[3] The 1954 Convention relating to the Status of Stateless Persons has 65 States parties and the 1961 Convention on the Reduction of Statelessness has 37 States parties.

[4] UNHCR, "Review of the use of UNHCR Executive Committee Conclusions on International Protection", PDES/2008/03, paras. 3, 73, 88, 98, 101.

International Commercial Arbitration have been important tools for the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

22. While the United Nations disarmament machinery has contributed to the development of multilateral norms for the elimination of weapons of mass destruction and the regulation of conventional armaments, including substantive criteria for evaluating progress in those fields, there are few mechanisms to promote the implementation of such norms domestically. In addition to a lack of congruency between global disarmament norms and domestic structures to implement them, there has also been an uneven evolution of such norms.[5]

23. Systems for the collection of international norms and their monitoring and national laws and practices are helpful tools that ensure access to jurisprudence and trends in the interpretation and use of international law. These include the collection of case law on UNCITRAL texts (CLOUT), the Universal Human Rights Index, Refworld, and the United Nations Human Settlements Programme housing rights documentation centre.[6] The website on United Nations legal technical assistance[7] is an important resource on international law. The Organization also recently launched an audiovisual library of international law,[8] which provides training and research materials to an unlimited number of recipients worldwide.

B. International and hybrid courts and tribunals and non-judicial dispute resolution mechanisms

24. The principle that all individuals and entities, including States, are accountable to the law lies at the heart of the rule of law. Responsibility of all subjects of international law for fulfilling their obligations is thus essential to any concept of rule of law at the international level.

25. The International Court of Justice, the principal judicial organ of the United Nations, plays a crucial role in addressing disputes between States and in the development of international law. Member States continue to reaffirm their confidence in the Court's ability to resolve their disputes. Currently, 15 contentious cases are pending before the Court, which delivered its most recent judgement in April 2010. Advisory proceedings carry great weight and moral authority, often serving as an instrument of preventive diplomacy and contributing to the

[5] There are a number of multilateral treaties to ban certain types of weapons (e.g. the Chemical Weapons Convention and the Biological Weapons Convention), as well as multilateral treaties negotiated but not yet in force (e.g. the Comprehensive Nuclear-Test-Ban Treaty), or agreed in principle but not negotiated (e.g. the proposed fissile material cut-off treaty). There are also partially developed legal regimes (e.g. the Outer Space Treaty) and weapons not covered by any multilateral treaties, such as missiles, small arms and light weapons, conventional arms and space weapons. There are also treaties on weapons derived from international humanitarian law (e.g. the Convention on Certain Conventional Weapons, the Convention on Cluster Munitions, and the Anti-Personnel Mine-Ban Convention). In addition, ad hoc supplier regimes exist, such as the Nuclear Suppliers Group. The Security Council has also created legal mandates, such as in resolution 1540 (2004).

[6] Available from www.uncitral.org/uncitral/en/case_law.html, www.universalhumanrightsindex.org, www.refworld.org and www.unhabitat.org/unhrp.

[7] Available from www.un.org/law/technical/technical.htm.

[8] Available from www.un.org/law/aul/.

clarification of the state of international law on a given issue. For example, the Court's advisory opinion on the question of accordance with international law of the unilateral declaration of independence in respect of Kosovo found that the adoption of that declaration did not violate general international law, Security Council resolution 1244 (1999) or the constitutional framework and that, consequently, it did not violate any applicable rule of international law (see A/64/881).

26. The ad hoc international tribunals for the former Yugoslavia and Rwanda, as well as the Special Court for Sierra Leone, have resulted in general acceptance of individual responsibility for crimes under international law. The Organization continues to plan for mechanisms to carry out the residual functions of these institutions after the completion of their mandates. Their legacy is being promoted through the transfer of cases of low-level indictees to the competent national jurisdictions, cooperating with national prosecuting authorities and making archives accessible to the public in the affected countries, as highlighted recently at a legacy conference of the International Tribunal for the Former Yugoslavia. In 2010, the outreach activities of the International Criminal Tribunal for Rwanda included the sensitization of youth in five countries of the region on genocide and its causes.

27. The Extraordinary Chambers in the Courts of Cambodia, while operating with international cooperation and assistance, should ensure a stronger legacy for enhancing the rule of law in Cambodia because they form part of the national legal system with national participation in its organs. The Chambers issued the first verdict in July 2010, finding Kaing Guek Eav, alias Duch, guilty of crimes against humanity and war crimes and sentencing him to 35 years of imprisonment. The Special Tribunal for Lebanon, the most recently created United Nations-supported tribunal, is an important international judicial response to terrorism, which should also help to end impunity in Lebanon. Its investigations are ongoing.

28. The International Criminal Court, the only independent permanent international criminal tribunal, was established by the Rome Statute, which now has 113 States parties. I opened the first Review Conference of the Rome Statute in Kampala in May 2010, at which States parties reaffirmed their commitment to the Statute and its full implementation. The parties adopted a definition of the crime of aggression and set out the conditions for the Court to exercise its jurisdiction over it, although the entry into force of the amendment was delayed to at least 2017. The Rome Statute was further amended to expand the definition of war crimes to include the use of certain weapons in non-international armed conflicts.

29. One of the main challenges faced by the Court remains cooperation from States, mainly with regard to the arrest and surrender of persons for whom the Court has issued an arrest warrant. Nine such persons remain at large, undermining the contribution of the Court to the international rule of law.

30. International justice is complementary to national justice, and the international community must contribute more to positive complementarity and to filling the impunity gap. As the International Criminal Court operates on the basis of the principle of complementarity, it should also contribute to the development of national capacities to handle international crimes. States parties to the Rome Statute have recognized the desirability of assisting each other in strengthening domestic capacity. The United Nations should further enhance its support to Member States in reinforcing or developing their capacity in that regard. Success in those efforts

requires coordination and coherence that effectively links international criminal justice to support for the development of the rule of law in appropriate countries.

C. Non-judicial accountability mechanisms

31. There are numerous non-judicial mechanisms and means of monitoring compliance with international norms and standards and helping to resolve disputes. In the past decade, commissions of inquiry established to investigate serious violations of human rights and international humanitarian law have become the foremost non-judicial accountability mechanism, as illustrated by experience over the past year.

32. The report of the fact-finding commission to investigate the facts and circumstances of the assassination of the former Prime Minister of Pakistan, Benazir Bhutto, concluded that a serious, credible criminal investigation to determine who conceived, ordered and executed the crime with a view to bringing those responsible to justice remains the responsibility of the Pakistani authorities. Such an investigation would constitute a major step towards ending impunity for political crimes in Pakistan.

33. The Commission of Inquiry for Guinea, established only weeks after the events in Conakry in 2009, submitted its report recommending that the Government prosecute those responsible and provide compensation to victims, and, as the Commission considered that acts of violence, particularly those of widespread and systematic sexual violence, constituted crimes against humanity, that the case against the individuals concerned be referred to the International Criminal Court. It had an immediate effect in Guinea, eventually leading to the selection of an interim Head of State and the appointment of a consensus Prime Minister.

34. I remain convinced that accountability is essential for durable peace and reconciliation in Sri Lanka. On 22 June 2010, I appointed a panel of experts to advise me on the accountability issues related to the alleged violations of international human rights and humanitarian law committed during the final stages of the conflict in Sri Lanka in 2009.

35. The recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48) were endorsed by the Human Rights Council in its resolution S-12/1, and the General Assembly, in its resolution 64/10, requested the Secretary-General to report on the implementation of certain recommendations. I have submitted the report of the Mission to the Security Council (see S/2009/586).

36. Another effective tool for promoting accountability is the monitoring and reporting mechanism on children in armed conflict, established by the Security Council in its resolution 1612 (2005). In 2009, the mechanism was being implemented in 14 conflict-affected countries, resulting in the release in the Sudan alone of 1,359 children from armed groups and armed forces.

III. United Nations approach to the rule of law at the national level

37. Prior reports outlined my guidance note on the United Nations approach to rule of law assistance, which contains guiding principles and a framework for strengthening the rule of law in line with national priorities, strategies and plans (see A/63/226, paras. 17-21). The approach involves United Nations actors working jointly in a coherent manner on thorough assessments with the participation of national stakeholders, the development of a comprehensive rule of law strategy or plan, coordinated by the senior United Nations representative in country, and joint programming, including implementation and accountability responsibilities.

38. Joint United Nations action is increasing, and while it is still in the early phases, the results are encouraging. Key achievements in programming at the national level during the past year illustrate ongoing efforts and areas in need of further concerted action. The imperative remains for the United Nations system to enhance the implementation of this approach and increasingly illustrate the impact of activities on the rule of law in the societies it serves.

A. Framework for strengthening the rule of law

1. Constitution-making

39. Constitutions or their equivalent are a cornerstone of the United Nations approach to strengthening the rule of law, and often play a key role in the implementation of international law. In many States, constitutions provide for the direct applicability of international law in the domestic legal system. In some cases, domestic legislation is required if international obligations lack the level of specificity needed to be self-executing. Constitutions can make national law subordinate to international law and may also provide procedures for courts to follow in assessing the conformity of national law with international obligations of the State, including taking into account the decisions of relevant international courts (see annex).

40. United Nations assistance should follow my guidance note on United Nations assistance to constitution-making processes, which includes the promotion of compliance of constitutions with international human rights and other norms and standards. For instance, the Organization is supporting the constitution-making process in Somalia by organizing an induction seminar for the Constitution Committee of Somalia's Transitional Federal Parliament, and providing human rights advice to the Independent Federal Constitution Commission. An inter-agency effort resulted in emergency support to the United Nations in Kyrgyzstan to assist the Government's constitution-making process. The constitution has now been passed by referendum. The United Nations is also providing assistance in the comprehensive review of the constitution in Zimbabwe.

41. Another key aspect of the United Nations approach is meaningful public consultation on constitution-making, especially with marginalized and vulnerable groups. In Nepal, the United Nations supported widespread consultations with women on the constitution, resulting in a handbook on recommended gender provisions. In view of the constitutional reform process in Chile, a report was

submitted to the Government by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, outlining the right to consultation and providing examples of consultation mechanisms in other countries (A/HRC/12/34/Add.6). Subsequently, the Chilean Government initiated consultations with indigenous groups on the process.

2. National legal framework

42. The United Nations continues to assist States in incorporating their international legal obligations into domestic law and policy, as well as developing the legal foundations for governance, oversight and accountability of rule of law institutions. In this regard, substantial technical advice in the formulation of specific laws and policies is provided. Nevertheless, the Organization should intensify its efforts to develop national capacities in the area of legislative reform.

43. In criminal law reform, examples from the work over the past year include a joint United Nations programme in Nepal that incorporates a gender perspective in the drafting of the new criminal and civil codes. The Organization also supported the drafting of the rules of criminal procedure, the criminal code and the military justice code in Burundi, as well as the review of the electoral code of good conduct and the translation of the new penal code into Kirundi.

44. With regard to human rights standards, the United Nations supported the passage of the Law of the Child Act in the United Republic of Tanzania, which incorporates the provisions of the Convention on the Rights of the Child in national law. New or amended legislation related to juvenile justice was approved in Burundi, Ecuador, Mauritania, Papua New Guinea and the Sudan. In the Central African Republic and Southern Sudan, new prison laws integrating human rights standards were drafted with the support of the United Nations.

45. United Nations support in the area of economic and social issues resulted in a new land policy in Kenya that was approved in 2009. Efforts of the United Nations also led to the drafting of a national policy on internally displaced persons in Kenya, and a legal audit exercise was conducted in the Central African Republic as a first step towards the development of a domestic law on internally displaced persons.

3. Institutions of justice, governance, security and human rights

46. The implementation of constitutional guarantees and laws, policies and regulations lies ultimately with the institutions, both formal and informal, that make, promulgate, enforce, uphold and adjudicate the law, whether criminal, public or private. A critical aspect of United Nations support is the strengthening of these institutions in a comprehensive manner to ensure that they are well structured and adequately financed, trained and equipped to provide legal protection, safety and security and access to justice for all. The Organization must do more to galvanize sector-wide approaches to ensure that the development of the various interconnected institutions is aligned and mutually reinforcing.

47. In the Democratic Republic of the Congo, the United Nations initiated a multi-year joint justice programme with national authorities to promote access to justice, improved judicial performance, anti-corruption activities and prison reform, as recently recognized by the Security Council in its resolution 1925 (2010) (para. 12 (o)). After the devastating earthquake in Haiti, a joint programming

framework for the rule of law and security was developed and the Ministry of Justice and Public Security established a sector-wide recovery plan with United Nations support. In Timor-Leste, there is a joint initiative in support of security sector reform, and joint initiatives on access to justice for women are being rolled out in Colombia, Nepal and Uganda. The impact of joint initiatives was seen in Chad, where the first-ever criminal sessions were held in 2009 in Abéché, Ati, Mongo and Am Timan.

48. A programme in Burundi was launched to mentor, professionalize, monitor and equip judges and prosecutors in four provinces. In Liberia, mobile courts operating in the Monrovia Prison to address pre-trial detention reviewed 2,988 cases, leading to the release of 1,194 prisoners. The Organization also helped to establish the first child family court in Swaziland and to add 10 courts to the system in Zambia. The Interagency Panel on Juvenile Justice coordinated follow-up to recommendations of the Committee on the Rights of the Child for Burkina Faso, Ecuador, Mauritania, Mongolia, the Niger, Pakistan and Qatar. With United Nations support, Ethiopia developed a national criminal justice policy, which includes attention to justice for children. In Angola and Mozambique, specialized courts for juvenile justice and related social facilities and training of relevant professionals were developed.

49. Support in designing and conducting comprehensive justice system assessments has begun in the Lao People's Democratic Republic, Malawi and Swaziland under a new global programme on access to justice in development contexts. In Timor-Leste, the independent comprehensive needs assessment of the justice sector led to the recent finalization of the justice sector strategic plan. The United Nations has started supporting witness protection programmes in Argentina and Uganda. Preliminary studies on inheritance and property rights were initiated in Egypt and West Africa to enhance women's access to justice. Land conflict mediation centres have been established in Ituri in the eastern part of the Democratic Republic of the Congo. More than 10,000 households recently obtained land tenure recognition in Kandahar, Afghanistan, with United Nations support.

50. On prison reform, Iraq and the United Nations held a high-level strategy session this year. The President of Liberia recently opened a new central prison in Sanniquellie, established with United Nations support. In Guinea-Bissau, the Organization assessed the penitentiary system to develop a comprehensive reform programme under the Ministry of Justice. A strategic prison reform plan was drafted in Burundi. Joint prison assessment missions to Ghana and Uganda also took place.

51. In the field of security, the United Nations held workshops for the defence and security forces of the Central African Republic on security sector reform, and has provided advice on the implementation of the national action plan. Similar assistance is provided in Somalia and Southern Sudan. In Guinea-Bissau, the Organization supports the Ministry of the Interior in vetting the public order police, on an integrity and accountability strategy and witness protection. To tackle organized crime and drug trafficking in West Africa, the Organization and other partners supported an expert group meeting and a ministerial conference in Sierra Leone as part of the joint West Africa Coast Initiative. In Afghanistan, the United Nations trained trainers as part of the establishment of a customs department. In Timor-Leste, United Nations police continued to provide for law enforcement on an interim basis, and capacity-building of police and law enforcement was critical in Bangladesh, the Central African Republic, Guinea-Bissau, the Islamic Republic of

Iran, Myanmar, Nepal and Somalia. In Israel, the Organization trained officers of the Ministry of the Interior, who assumed responsibility for examining asylum claims.

52. The International Commission against Impunity in Guatemala, supported by the United Nations, acts as an international prosecutor, bringing best practices to bear in complex criminal cases while operating within the framework of the Guatemala national justice system and laws. A high level of public support for the Commission has resulted in the recent extension of its mandate by two years. It should contribute to new models for international involvement to strengthen law enforcement and judicial institutions in societies with an entrenched history of impunity and rights abuses.

4. Transitional justice

53. In 2010, I issued guidance on the United Nations approach to transitional justice to strengthen the coherence and quality of the assistance provided to judicial and non-judicial processes and mechanisms, based on national consultations, that ensure accountability, serve justice and achieve reconciliation in the context of past large-scale abuses. The approach reaffirms that the combination of mechanisms chosen must be in conformity with international standards and grounded in victims' perspectives, particularly those of marginalized groups. Transitional justice should take account of the root causes of conflicts and related violations of all rights, including civil, political, economic, social and cultural rights. The note outlines ways of incorporating transitional justice considerations in peace processes and in disarmament, demobilization and reintegration efforts. Such an integrated and interdependent approach can contribute to the prevention of further conflict and to peacebuilding.

54. Support for such activities continued in Afghanistan, Bosnia and Herzegovina, Burundi, Colombia, the Democratic Republic of the Congo, Iraq, Kenya, Liberia, Nepal, Sierra Leone, Solomon Islands, Somalia, Togo and Uganda (see A/HRC/12/18 and Add.1). For instance, a working group was established to draft a national strategy for transitional justice in Bosnia and Herzegovina, which is a criterion for accession to the European Union. In Sierra Leone, United Nations resources support micro-grants for civil war victims. The Organization is supporting a truth commission in Solomon Islands to ensure that women's voices are heard. By providing technical advice to Hungary, the United Nations helped to establish an international centre on the prevention of genocide in Budapest. The United Nations supported medical, psychological and social rehabilitation of torture survivors in Iraq.

55. Special attention was paid to transitional justice processes involving children. With its partners, the Organization helped to prepare a chapter on children in the report of the Liberian Truth and Reconciliation Commission. In Nepal, the United Nations helped to facilitate the participation of children in the national consultation on the draft truth and reconciliation commission bill. It also supported a groundbreaking publication on children and transitional justice,[9] and co-convened an international conference on this theme. Guidance was given to the International

[9] Sharanjeet Parmar and others (eds.), *Children and Transitional Justice: Truth-Telling, Accountability and Reconciliation*, Cambridge, Massachusetts, Human Rights Program at Harvard Law School, 2010.

Criminal Court on the protection of child victims and witnesses in its first trial, on charges of the recruitment and use of children in armed forces.

5. Empowering individuals and civil society

56. The United Nations approach to strengthening the rule of law recognizes the importance of the principles of legal empowerment and the engagement of civil society. Activities to improve access to information, legal assistance and protection, victim support, peaceful settlement of disputes and the prevention of crime and other conflict within communities must complement the development of strong institutions and target the poor and most marginalized, as well as those affected by conflict and crisis.

57. Civil society initiatives to strengthen the rule of law in Afghanistan, China, Ethiopia, Iraq, Kazakhstan, Morocco and Sierra Leone, as well as at the region level in Africa, receive financial support from the United Nations, including its Democracy Fund. In Bosnia and Herzegovina and Nepal, development of the capacity of non-governmental organizations is combined with micro-grants for implementing community-level access to justice projects.

58. The United Nations advises on public legal awareness campaigns, incorporating radio, television and outreach activities, as well as public legal and paralegal aid in, for example, Burundi, the Central African Republic, Georgia, Haiti, the Lao People's Democratic Republic, Rwanda, Serbia and Timor-Leste. The legal assistance provided in conflict-affected countries has produced results in 2010. In Somalia, sexual assault referral centre addressed 129 sexual violence cases, and legal aid centres throughout the country handled more than 3,000 cases. In Nepal, free legal aid centres processed 278 cases assisting women and the socially excluded.

59. Building on its growing experience, the United Nations system has begun collaborating on child-friendly legal aid in Africa. Legal aid practitioners met in Asia, Africa and Central Asia and the Caucasus to improve legal assistance and access to justice. International standards on the provision of legal aid in criminal cases are expected to be finalized by the end of the year. Such sharing of good practices provides an opportunity to develop a coherent United Nations approach to supporting legal and paralegal assistance.

B. Addressing critical challenges

60. The Organization continues to identify and address significant gaps in its engagement in the area of rule of law, to ensure balanced and responsive support to States. The present report provides an opportunity to inform Member States of the challenges faced in providing rule of law assistance at the national level. In some areas, important action has been taken over the past year, while others continue to demand more concerted effort.

1. Early engagement in conflict and post-conflict societies

61. United Nations engagement in the area of rule of law is highly concentrated in conflict and post-conflict societies. Seeds for the long-term recovery of the rule of law can and should be sown as early as possible. However, key challenges remain

owing to the limited financial and human resources available for this work. The high demand for Peacebuilding Fund support for strengthening the rule of law illustrates the genuine need for increased financial resources in the peacebuilding context. Both standing and standby capacities are still needed to ensure the rapid deployment of the necessary expertise to conflict and post-conflict environments. A positive step is the establishment of a standing capacity for justice and corrections in the Department of Peacekeeping Operations to complement the standing police capacity and start-up justice and corrections components in new peacekeeping operations, as well as to reinforce existing missions.

62. The challenge posed by organized crime, corruption and illicit trafficking to the rule of law in conflict and post-conflict States is increasingly apparent. The international community has so far, at best, provided short-term solutions. Criminal money and networks subvert institutions and economic structures, undermining peacebuilding and public trust in the rule of law. Corruption is linked to lower economic growth, perpetuation of wartime power structures and unjust distribution of public resources. Where implicated in the political economy of conflict, economic criminality tends to be systemic and well-integrated into regional and global networks. The United Nations is learning to integrate sustainable and coherent approaches to such crimes in rule of law programming in conflict-affected States and regions. A promising step is the current development of an organized crime threat assessment for host countries of United Nations peace operations.

2. Detention and corrections

63. Reducing pretrial detention and promoting alternatives to imprisonment are main entry points for progress in detention and corrections, an area long underserved by rule of law programming. Those issues were discussed at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice in 2010 by 1,200 policymakers and practitioners, resulting in the Salvador Declaration (A/CONF.213/18, chap. I, resolution 1). The draft United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which supplement the Standard Minimum Rules for the Treatment of Prisoners, will be submitted to the General Assembly for adoption (see E/2010/30, chap. I.A, draft resolution II).

64. Alternatives to detention for children have been a priority. A detailed toolkit on diversion from judicial proceedings and alternatives to detention has been finalized, and a global study on the administrative detention of children is in its final stages. Results are being seen from these efforts. Across half the regions in Togo, combining capacity-building and new alternatives to deprivation of liberty for children resulted in an 83 per cent increase in the use of alternatives. In Albania, new victim-offender mediation and capacity-building for relevant actors resulted in 42 per cent of juvenile sentences being referred to alternatives. In Yemen, a comprehensive approach resulted in 668 children receiving non-custodial measures instead of detention.

3. Sexual and gender-based violence

65. Addressing sexual and gender-based violence from a rule of law perspective requires the provision of systematic, coherent and sustainable support to national and international efforts. Positive results have emerged as a result of systematic

support for the establishment of specialized police units to respond to sexual and gender-based violence in Burundi, Chad, the Democratic Republic of the Congo, Guinea-Bissau, Haiti, Liberia, Sierra Leone, the Sudan, Timor-Leste and Kosovo.

66. The Security Council, in its resolution 1888 (2009), called upon me to establish a team of experts that could be deployed rapidly to assist national authorities in strengthening the rule of law with respect to sexual violence in armed conflict. The Organization set up the team of experts, drawing from the rule of law entities in the system, to support the newly appointed Special Representative of the Secretary-General on Sexual Violence in Conflict. The team's work must be integrated into existing rule of law efforts in countries and reinforce overall coordination and coherence. It is vital that this initiative be successful to pave the way for similar approaches so as to address gender and sexual-based violence more generally.

4. Housing rights, property and land governance

67. There are few more contentious and complex problems in the world than those concerning land and secure tenure. States in all regions are facing multiple claims over land and associated resources, high levels of politicization of the issue and a lack of public administration capacity to address it. In humanitarian and post-conflict settings, land-related issues have often been avoided and, where engagement exists, efforts are focused on restitution for the displaced in line with the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, although it is also necessary to address tenure security and access to housing, land and property. In all countries, these issues are usually highly political, often challenging powerful economic interests and affecting the allocation of resources. This area is underfunded and lacks capacity for coordination, considering the number of players and the breadth and technical complexity of the issues. Greater political attention is needed globally to galvanize efforts.

68. Promising initiatives include the development, currently under way, of voluntary guidelines to enhance the governance of land tenure and other natural resources by the Food and Agriculture Organization of the United Nations, and a land policy and reform framework for Africa supported jointly by the African Union, the United Nations and the African Development Bank. A United Nations system-wide approach could add value by harmonizing language and policies and ensuring an institutional response across development, disaster and conflict contexts. It should also promote attention to gender equality, the rights of indigenous people and the relationship of formal and informal systems. A significant investment of resources would be required, however, to enhance system-wide capacity.

5. Informal justice systems

69. The upcoming finalization of the joint study on informal justice systems moves the United Nations closer to a coherent approach to rule of law assistance in the context of legal pluralism. It distinguishes among mechanisms anchored in customary and tribal social structures, religious authorities, local administrative authorities, specially constituted State customary courts and community forums trained in conflict resolution. Findings indicate that although each country and informal system is unique, systems appear to be flexible and open to change,

particularly in hybrid systems where the State has adopted rules and frameworks to regulate the operation of informal systems. The findings have positive implications for programming with those systems, especially for the incorporation of human rights standards, particularly women's rights. The emerging recommendations will feed into system-wide guidance on informal justice systems to enhance United Nations support and its coherence.

IV. Overall coordination and coherence

70. Responsibility since 2007 for the overall quality, coordination and coherence of the rule of law within the United Nations system rests with the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit under the leadership of the Deputy Secretary-General.[10] The aim of this arrangement is to more effectively and coherently deliver on mandates and respond to emerging challenges in the rule of law field. Operational activities are undertaken by United Nations entities, and lead entities bear responsibility for coordinating and facilitating efforts in their respective sub-sectors of the rule of law (see A/61/636-S/2006/980).

71. Essential for the success of this arrangement is the unanimous support of Member States. The expression of support by the General Assembly continues to be heartening. It is encouraging that the Security Council this year welcomed the establishment of the Group and the Unit. The Council also urged greater efforts by the Group to ensure a coordinated and coherent response by the United Nations system to issues on the Council's agenda related to the rule of law (see S/PRST/2010/11). It is important that this request be fulfilled without delay.

A. Providing guidance and implementing the joint strategic plan

72. To improve the overall policy coherence of the Organization's engagement on the rule of law, I continue to give broad strategic direction on cross-cutting issues, drawing on the expertise of the Group and the Unit. Under the leadership of the Office of the United Nations High Commissioner for Human Rights, a common approach to transitional justice, issued in March 2010, addresses an important, complex area of United Nations engagement; it is vital to implement this approach.

73. Earlier guidance continues to be operationalized with some promising results, yet more needs to be done to realize the full value of these system-wide approaches. To systematically follow up on the guidance of the United Nations approach to justice for children, the United Nations Children's Fund annually maps its activities worldwide and targets technical assistance to key countries. In accordance with my guidance, the Group began to act as the convening mechanism for United Nations support to constitution-making in 2010. However, to effectively deliver coordinated support to country presences, increased capacity and implementation is required.

[10] See A/63/226, paras. 46-48. The Group consists of the principals of the Department of Political Affairs, the Department of Peacekeeping Operations, the Office of the United Nations High Commissioner for Human Rights, the Office of Legal Affairs, the United Nations Children's Fund, the United Nations Development Fund for Women, the United Nations Development Programme, the Office of the United Nations High Commissioner for Refugees and the United Nations Office on Drugs and Crime.

74. In line with the first outcome of the joint strategic plan for 2009-2011, the Group has developed procedures to strengthen rule of law policy and guidance. A regular review of materials that are planned or under development highlights system-wide gaps and needs, as well as potential partnerships. A complementary system of endorsement for material of system-wide relevance should maximize good practices, while eliminating policy incoherence and duplication. Linked to effective policy development is unified rule of law training to enhance the capacity of staff from across the system to implement the Organization's approach to rule of law. The training is being designed by the Group in partnership with the United Nations System Staff College, to be piloted in 2011.

75. Ultimately, global coordination and coherence efforts must improve the support provided to Member States. The second outcome of the Group's plan is thus to implement the United Nations common approach to rule of law assistance in three countries, for which Liberia and Nepal have so far been selected. Led by the United Nations presence in the country, Headquarters support should facilitate a shared diagnosis among all relevant entities of the needs and priorities in the rule of law, including gaps for enhanced or new programming. A joint United Nations strategic programme will be developed in support of national actors. Increasing the visibility of rule of law efforts in those countries will be critical, as will the availability of financial and other resources for programming. Where needed, support at the senior level can be provided by Headquarters.

76. While still in the early stages, the pilot country exercise will help the Group develop shared methodologies that will benefit rule of law efforts in other countries, such as joint assessment, strategy development and programming. This should be particularly useful in peacebuilding, where the Group is to act as a resource on the rule of law for the Peacebuilding Commission and the Peacebuilding Support Office. It is thus encouraging that the Security Council recognized that sustainable peacebuilding requires an integrated approach among all parts of the United Nations system, which strengthens coherence among political, security, development, human rights and rule of law activities and ensures capacity-building support to assist national authorities to uphold the rule of law, especially after the end of United Nations peacekeeping and other relevant missions.

77. The last outcome of the Group's plan is to support Member States in holding a high-level segment of the General Assembly on the rule of law. It has been five years since Member States undertook significant commitments on the rule of law, at the 2005 World Summit. It is an opportune time to reaffirm that the rule of law is crucial to meeting the challenges to development and peace and security of our time. I would therefore welcome such an initiative in 2011.

B. Reaching out system-wide

78. A priority of coordination and coherence efforts continues to be reaching out system-wide to the more than 40 United Nations actors active in the rule of law so as to enrich the overall approach. While the breadth and diversity of our activities in this field remains an unparalleled strength of the Organization, it is also a challenge to marshalling efforts.

79. A major recent initiative was the development of a United Nations rule of law website and document repository, launched in late 2009. A hub for United Nations

entities working on rule of law, this resource links the websites of more than 30 entities and centralizes over 1,000 documents. Consolidated, up-to-date information on rule of law issues, upcoming events, publications and news is accessible for field staff, as well as external practitioners and the general public.[11] The website provides access to state-of-the-art knowledge resources, with over 240 links to research databases, practitioner networks, training courses, other international rule of law actors and job announcements.

80. Other initiatives include the second annual system-wide meeting, attended by 25 entities of the United Nations system, involving thematic discussions on issues of shared concern. The Group also decided that coordination with the World Bank on the rule of law should be institutionalized at the Headquarters level after the United Nations/World Bank knowledge-sharing workshop in 2009. Both organizations share common experiences and lessons learned, and the growing focus of the Bank on conflict-affected and fragile environments is one potential area for joint action.

81. The United Nations system's rule of law work must be better harnessed towards economic and social justice and reaching the development goals of States. In the face of multiple priorities and dwindling resources, the relationship between legal and policy protection and poverty reduction continues to be undervalued. General Assembly resolution 64/215 on the legal empowerment of the poor is a welcome step. A recent panel discussion by UNCITRAL highlighted the linkages among the rule of law, economic and commercial relations and development. As the international community considers progress made towards the Millennium Development Goals in September, it is important to recall that the rule of law at the national and international levels remains essential for sustained economic growth, sustainable development and investments, and the eradication of poverty and hunger (see resolution 60/1).

C. Measuring effectiveness and evaluating impact

82. The United Nations must base its rule of law assistance on thorough diagnostics and ongoing monitoring and evaluation. Comprehensive and in-depth assessments, involving meaningful national engagement, are essential for developing a shared understanding of the needs, objectives and priorities of assistance, as well as providing baseline data for evaluations.

83. Despite progress in United Nations rule of law efforts, evaluating the impact of this assistance and measuring its effectiveness remains a major challenge. The diversity of monitoring and evaluation tools used hampers system-wide planning for the necessary resources and assessment of common results. Frameworks should focus on impact rather than on inputs and outcomes. To facilitate joint action, entity-specific systems should be harmonized to allow for inter-agency, sector-wide and programme-based assessments, thus enabling responsiveness to impact findings at the country level.

84. The Organization has launched some promising initiatives to better track progress in the development of the rule of law and to evaluate its action more systematically. The United Nations rule of law indicators project consists of

[11] Currently available from www.unrol.org in English; will be available in all six official languages by 2011.

114 indicators, an implementation guide, a set of questionnaires and checklists and a country fact sheet template to assist national authorities in countries emerging from conflict in their rule of law reforms, in particular to measure changes in the integrity, capacity and outcomes of criminal justice institutions over time. Already piloted in Haiti and Liberia, the indicators are expected to be finalized in late 2010.

85. Discussion is ongoing on how the project will integrate the Manual for the Measurement of Juvenile Justice Indicators, which was rolled out recently in Algeria, Djibouti, Madagascar, Morocco, Nigeria, Tunisia and Viet Nam. In support of implementation, workshops for national-level officials took place in North Africa, Central and Eastern Europe and the Commonwealth of Independent States this past year.

86. Other initiatives provide promising models for improving monitoring and evaluation in the rule of law area. The Better Work programme involves a net impact analysis to determine the causal links between project interventions and outcomes for enterprises and workers in line with the implementation of international labour standards. It uses indicators on enterprise performance and human development based on new and existing data, as well as qualitative research on human resource practices. Tools for monitoring and evaluation in all programme countries have been developed, and a five-year study in Viet Nam will follow up to 700 factories and their workers before, during and after Better Work interventions.

D. Expanding partnerships

87. Expanding partnerships that maximize coherence and coordination on the rule of law remains a primary task of the Group and the Unit. The United Nations continues to face a fragmented external environment, where donors and assistance providers label rule of law activities differently and inconsistently frame policies and operational approaches. No global coordination mechanism exists around which to forge consensus nor through which donors, practitioners and partner countries can engage. At the country level, various approaches and coordination mechanisms are used, but there is little comparative analysis of good practice and no consistency of method.

88. Action to address these challenges must be grounded in the perspectives of those receiving assistance. To this end, the United Nations brought together 15 national leaders from all regions, who played a key role in rule of law development in Cambodia, Kenya, Liberia, Nepal, Nigeria, the Palestinian Authority, Peru, Sierra Leone, South Africa, Timor-Leste, Uganda, Ukraine and the Caribbean region, in two workshops. The leaders explored the dynamics behind the concept of national ownership and the effectiveness of international support in their countries. A report on the process is scheduled for publication.

89. Despite the wide geographic range of these actors and the diverse rule of law fields they represent (e.g. prisons, security, justice, civil society, legal aid and the judiciary), consensus emerged on key conclusions. Credible and legitimate national leadership is essential and is facilitated by relationships between national and international actors based on trust. Benefits were identified in using a sector-wide approach that ensures appropriate attention to all aspects of justice and security and increases coordination and coherence within Government and among donors.

90. Donor practice has not evolved sufficiently to ensure that national actors play a key role throughout the assistance programming cycle, from early design to evaluation. Recurring themes included the continuing imperative to develop national capacity in legal and institutional reform instead of providing short-term, donor-driven technical assistance, and the importance of independent and widely available programme evaluations. Though not novel, these messages are a reminder of the gap between the principles that guide international assistance and their full realization in the rule of law field in countries.

91. From a donor perspective, more attention is being given to justice and security programming in post-conflict and fragile settings. The Organization for Economic Cooperation and Development International Network on Conflict and Fragility recommended that donors align justice and security under the framework of the rule of law as a foundation for peacebuilding and state-building to better support partner Governments in enhancing service delivery for citizens. In follow-up, donors agreed to map support for justice and security reforms to identify policy, programming and coordination challenges and their potential solutions, with the possibility of reviewing practice in key countries in 2011.

E. Strengthening the rule of law in the Organization

92. Operational for over a year, the new system of administration of justice is a milestone in the Organization's commitment to the rule of law at the institutional level. To date, the United Nations Dispute Tribunal has issued more than 213 judgements, and the United Nations Appeals Tribunal, which recently completed its first session, reviewed 65 appeals.

93. Security Council resolution 1904 (2009) concerning the Al-Qaida and Taliban sanctions is a concrete step towards transparency and due process in placing individuals and entities on the Consolidated List and removing them. It establishes an independent and impartial Ombudsperson to report to the Committee on the principal arguments concerning de-listing requests.[12] This is a positive development, though it remains to be seen how the Committee takes into account the Ombudsperson's observations. As a general rule, any improvements in procedures for listing and de-listing, as well as for granting humanitarian exemptions, should apply universally to all sanctions regimes. The Council should consider extending the mandate of the Ombudsperson to all the sanctions lists.

94. In my previous annual report, I emphasized the need to tackle the serious concerns raised about approaches to countering terrorism that undermine the rule of law. Over the past year, the United Nations High Commissioner for Human Rights addressed the Counter-Terrorism Committee, and the Security Council held an Arria formula meeting to discuss human rights and counter-terrorism in the work of its subsidiary bodies. At the core of these debates is the question of whether international human rights standards bind the actions of the Organization where individual rights are directly affected. The evolution of international law has led to more and more rights being vested directly in the individual. Yet, the Organization has not evolved at the same pace. The time has come to align the law applicable to the United Nations with developments in international human rights law.

[12] On 3 June 2010, I appointed Kimberly Prost to serve as Ombudsperson (S/2010/282).

V. Cultivating a just, secure and peaceful world governed by the rule of law

95. The process of strengthening the coordination, coherence and quality of United Nations work in the rule of law at the national and international levels is a long-term endeavour. Past recommendations (see A/63/226, paras. 76-78 and A/64/298, para. 97) provide an important road map for the Rule of Law Coordination and Resource Group and the Rule of Law Unit. They continue to be implemented, and progress is tracked annually through the annual report.

96. Since 2008, I have remarked on the critical interface between international and national rule of law, recommending that the United Nations focus on finding better ways to support Member States and their populations in the domestic implementation of international norms and standards, working to achieve compliance with international obligations and, most critically, strengthening the institutions, policies, processes and conditions that ensure effective enforcement and enjoyment of a just national and international order.

97. Across the rule of law field, whether from the perspective of international criminal justice and positive complementarity, justice and security programming in peacebuilding or technical assistance in the implementation of international law, coordination and coherence among the many stakeholders involved is the key to improving outcomes. While an incremental approach may be needed, ultimately the task before Member States, the United Nations and other partners is to establish and commit to a system whereby multilateral and bilateral donors work in a coordinated and collaborative manner with partner countries and practitioners towards the achievement of the rule of law for all. This should be a global platform for bilateral donors, recipients, multilateral and regional organizations and non-governmental organizations to maximize efforts, coherently inform policy and consistently improve practice.

Annex

Views expressed by Member States

1. The General Assembly, in its resolution 64/116, requested the Secretary-General to seek the views of Member States before preparing the present report.

2. By a note verbale dated 12 April 2010, the Secretary-General invited Governments to submit, no later than 31 May 2010, their views on the sub-topic "Laws and practices of Member States in implementing international law". The Chair of the Sixth Committee invited Member States to pay particular attention to "issues such as their laws and practices in the domestic implementation and interpretation of international law, strengthening and improving coordination and coherence of technical assistance and capacity-building in this area, mechanisms and criteria for evaluating the effectiveness of such assistance, ways and means of advancing donor coherence, perspectives of recipient States etc." (A/C.6/63/L.23).

3. The Secretary-General has received views expressed by Austria (11 June 2010), the Plurinational State of Bolivia (23 June 2010), Colombia (first submission: 17 June 2010, second submission: 30 June 2010), Cuba (10 June 2010), the Czech Republic (2 June 2010), the Democratic Republic of the Congo (14 July 2010), Italy (3 August 2010), Mexico (2 June 2010), Portugal (9 June 2010), Slovenia (23 June 2010) and Switzerland (27 May 2010). Those views are presented below.

Austria

[Original: English]

As a long-standing supporter of international law and the rule of law, Austria remains strongly committed to strengthening the rule of law in all its dimensions, that is, at the national, international and institutional levels. In particular, implementing international law at the national level is a key element not only for peace and security, but also for development and economic prosperity. Austria welcomes the discussions in the Sixth Committee in this context and would like to offer the following comments pursuant to paragraph 12 of resolution 64/116 with regard to the implementation of international law in Austria.

I. Constitutional framework

The Austrian legal order incorporates the rules of international law, both general international law as well as legal rules under treaties to which Austria is a party. Thus, international law — including international agreements — forms an integral part of the Austrian legal system and is interpreted and enforced by Austrian courts.

Generally accepted rules of international law are part of Austrian federal law pursuant to article 9, paragraph 1, of the Federal Constitutional Law. This provision covers customary international law as well as general principles of law which are incorporated into federal law in their most recent form (dynamic reception). Among the rules thus incorporated into domestic law figures, for example, the principle *pacta sunt servanda*.

Treaties and international agreements regarded as regulating political relations or as changing legislation are subject to parliamentary approval and ratification by the President (articles 50 and 65, Federal Constitutional Law).

Under Austrian constitutional law, rules of international law are able to directly create rights and duties for individuals in Austria provided they reach a certain level of specificity and are considered self-executing. When they are not considered sufficiently specific to be self-executing, Austria adopts national legislation to implement their provisions into domestic law. Customary international law and general principles of law, however, usually require specific transformation into domestic law.

Article 9, paragraph 2, permits the transfer of sovereign powers to intergovernmental institutions, rendering legislative acts of such organizations directly binding.

II. Implementing international law in Austria

Restrictive measures imposed by Security Council resolutions

When implementing restrictive measures against third countries imposed by Security Council resolutions, Austria strictly observes the principle of legality.

As a Member State of the European Union (EU), Austria jointly implements restrictive measures set out in Security Council resolutions together with other EU Member States. European Union legislation is often necessary to implement restrictive measures with a view to ensuring their uniform application by economic operators in all Member States.

In addition, the competent Austrian authorities will apply specific Austrian legislation in implementing the restrictive measures such as the War Materials Act (Federal Law Gazette I No. 57/2001 as amended), the Foreign Trade Act (Federal Law Gazette I No. 50/2005 as amended), the Foreign Trade Regulation (Federal Law Gazette II No. 121/2006), the Austrian Exchange Control Act (Federal Law Gazette I No. 123/2003), the Austrian Aliens Police Law (Federal Law Gazette I No. 157/2005 as amended) and the Law on Residence (Federal Law Gazette I No. 100/2005 as amended). These instruments as well as the Austrian Penal Code (Federal Law Gazette I No. 60/1974 as amended), render non-compliance punishable.

In order to be able to implement restrictive measures imposed by the Security Council in cases where the European Union has not yet acted, Austria has improved its existing legislation with regard to the freezing of funds, other financial assets and economic resources required by Security Council resolutions (Federal Act on the Implementation of International Sanctions [Sanctions Act 2010], entry into force on 1 July 2010).

Moreover, Austria regularly submits reports to the Security Council on the status of implementation of Security Council sanctions.

International criminal law and international humanitarian law

In line with the Austrian commitment to the rule of law and the fight against impunity, the Austrian Penal Code already contains provisions for the punishment of genocide and for all such crimes which constitute crimes against humanity or war crimes. In order to be able to implement fully the principle of complementarity as enshrined in the Rome Statute of the International Criminal Court, Austria is in the

process of explicitly integrating the crimes falling under the jurisdiction of the International Criminal Court into domestic criminal law. Austria is complementing this initiative with legislation to explicitly integrate grave breaches of the Geneva Conventions of 1949 and their Additional Protocols and the Convention against Torture into domestic criminal law. An interministerial working group under the lead of the Federal Ministry for European and International Affairs and the Federal Ministry of Justice has already made good progress.

III. Austrian rule of law activities at the national level

Administration of justice

Activities and projects for capacity-building and assistance to re-establish the rule of law in conflict and post-conflict societies are a main part of Austrian efforts to promote the rule of law in other national legal systems. The proper administration of justice is an important component of the rule of law. For many years Austria has been a main sponsor of the resolution on human rights in the administration of justice, in particular juvenile justice in the Third Committee of the General Assembly of the United Nations as well as in the Human Rights Council (formerly Commission on Human Rights). The main aim of the resolution is to promote human rights in the administration of justice worldwide by encouraging States to implement their international obligations in this regard. The resolution especially focuses on the improvement of national juvenile justice systems through national capacity-building programmes, technical assistance and training for national judicial authorities. In these efforts Austria cooperates closely with the Office of the United Nations High Commissioner for Human Rights.

Protection of civilians

From the point of view of development politics, Austria considers victim assistance at the national level as a particular starting point in the context of fragile post-conflict situations and pays special attention to vulnerable groups such as children or persons with disabilities. Austria's pronounced international engagement for comprehensive and all-encompassing standards in the field of victim assistance is exemplified by Security Council resolution 1894 (2009) on the protection of civilians in armed conflict, adopted unanimously under Austrian chairmanship. In the framework of Austrian development cooperation, in particular on the African continent and in South-East European countries, Austrian training programmes for mine victims include education and training on the intrinsic danger posed by landmines and cluster munitions. In view of this long-standing engagement, Austria has been chosen as friend of the Chair on victim assistance for the first meeting of States parties to the Cluster Munitions Convention, to be held in Vientiane in November 2010.

Bolivia (Plurinational State of)

[Original: Spanish]

According to article 255 of the State Political Constitution, "international relations and the negotiation, signing and ratification of international treaties are consistent with the objectives of the State in accordance with the sovereignty and interests of the people". Accordingly, we need to embark on a new phase of

international relations that will strengthen justice in order to meet the goals of the Plurinational State for developing a just and harmonious society built on decolonization, without discrimination or exploitation.

Article 10 of the Constitution establishes that the Plurinational State of Bolivia is a pacifist State that promotes a culture of peace and the right to peace, as well as cooperation among the peoples of the region and the world, in order to contribute to mutual understanding, equitable development and the promotion of interculturality, with full respect for the sovereignty of States. Treaties of peace and friendship are concluded for this purpose.

On its path of peace, security and global unity, the Plurinational State of Bolivia has the duty to protect the fundamental human rights of every inhabitant of the Plurinational State without exception. These rights are inviolable, interdependent, indivisible and progressive.

In this scenario, States are juridically equal. They enjoy equal rights and the equal capacity to exercise them and they have equal duties. The rights of a State do not depend on the power it has to ensure their exercise, but on the simple fact of its existence as a legal entity, especially in the case of a dispute which could jeopardize international peace and security if it continued and which should be resolved through peaceful means.

Bolivia is going through a process of profound structural, functional and institutional changes in the political, economic, social and cultural spheres. These changes are oriented to a restructuring of the State that has regional and international implications and the formulation of a new foreign policy with geopolitical implications in the region. This policy has produced a favourable environment for the new role that Bolivia must play in its political, economic and cultural relations in order to strengthen international relations mechanisms by designing, formulating, conducting and implementing a foreign policy that defends sovereignty and represents national interests.

The goal of Bolivia's foreign policy is to make the new State an international sovereign actor with its own identity, in the context of a new foreign policy doctrine of using political and diplomatic action to promote the defence and sustainable use of natural resources, the environment and biodiversity. This policy will be applied both nationally and internationally.

Article 410 of the State Political Constitution establishes that the Constitution is the supreme law of the Bolivian legal system and takes precedence over any other legislative provision. The body of constitutional law includes international human rights treaties and conventions and the norms of communitarian law.

As for human rights, article 13 of the Constitution indicates that the rights recognized by the Bolivian State are inviolable, universal, interdependent, indivisible and progressive. International treaties and conventions ratified by the Plurinational Legislative Assembly, which recognize human rights and prohibit their restriction during states of emergency, take precedence over domestic legislation. The rights and duties enshrined in the Constitution shall be interpreted in accordance with the international human rights treaties ratified by Bolivia.

Article 14 prohibits all forms of discrimination based on sex, colour, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language,

religious belief, ideology, political or philosophical opinion, civil status, economic or social status, type of employment, level of education, disability, pregnancy or any other form of discrimination that has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of the rights of any person. The State guarantees all persons and groups, without any discrimination, the free and effective exercise of the rights established by the Constitution, by legislation and by international human rights treaties.

International treaties take precedence over the principle of constitutional supremacy when such treaties specify rights not set out in the Constitution. Article 256 establishes that international human rights treaties and instruments which have been signed and ratified or to which the State has acceded, and which contain rights more favourable than those established in the Constitution, shall be applied in preference to the latter. The rights recognized in the Constitution shall therefore be interpreted according to international human rights treaties when such treaties include more favourable provisions.

In view of the global economic climate and the importance now attached to the concepts of peace, security and global unity, supranational measures that transcend the sphere of the State are needed. As for the recognition of international law, treaties and conventions, the International Court of Justice should be strengthened and given wider jurisdiction.

On 10 February 2010, the Plurinational State of Bolivia presented its national report to the Human Rights Council. The report describes the human rights situation in Bolivia and was prepared in a participatory process of interactive dialogue between the Government and civil society, overseen by the Ministry of Justice (involving 11 workshops held in nine departments with the participation of over 750 representatives of civil society organizations and institutions). It covers the period from 2006 to 2009, when structural changes were taking place in social, political, economic and cultural policy in respect of human rights. The report reflects the country's achievements and progress, new opportunities and pending tasks and challenges.

The Office of the Deputy Minister of Justice for indigenous and aboriginal farming peoples participated in a forum on indigenous peoples: development with culture and identity, which took place in New York from 19 to 30 April 2010 and focused on articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples. The impact of development policies on the culture and identity of the world's indigenous peoples was discussed. The Plurinational State of Bolivia submitted a report on the situation of the Guarani people, emphasizing that the Bolivian State had taken action in response to the urgent need to guarantee the fundamental rights of the Guarani people and provide decent living conditions for freed families, with land reorganization and provision of food and seeds. In addition, the role of women's organizations in Bolivia was emphasized. Historically, many indigenous women have taken on important roles and now they have achieved recognition as protagonists in the changes taking place in the country.

The Plurinational State of Bolivia through national Act No. 3897 of June 2008 was one of the first countries to incorporate into domestic law the 46 articles of the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted on 13 September 2007 at the sixty-first session of the General Assembly in New York.

With regard to climate change, Bolivia emphasized the need to seek harmony and balance between women and men and all of nature supported by Mother Earth.

As a symbol of brotherhood between States, the Peoples' World Conference on Climate Change and the Rights of Mother Earth was held in Tiquipaya in the Department of Cochabamba, Bolivia, in April 2010. It was attended by 35,352 people, including 9,254 foreign delegates representing social movements and organizations from 140 countries and 5 continents and 56 Government delegations from around the world. The agreements reached expressed the pleas of peoples affected by climate change. Each and every people has the same absolute rights to protection from the impacts of climate change, which have been caused by the developed countries.

Colombia

[Original: Spanish]

First submission
Legislation and practices of States in relation to the application of international law: application of international law at the domestic level

I. Strengthening and improving coordination and consistency in technical assistance

The consistency of technical assistance has as its objective to promote effectiveness and the national welfare. In this respect, Colombia takes an active part in coordinating and implementing framework cooperation documents with the different agencies of the United Nations system as strategic documents that establish the priorities for cooperation over the medium term in the country, so that as a recipient and provider of technical assistance it can respond to the real needs and objectives of development which could not otherwise be achieved.

Colombia works with a view to stimulating agendas and exchange, both bilateral and multilateral. It seeks to ensure that such exchange is consistent with needs and norms and in addition that it can be channelled efficiently through the national institutions that are part of the national system of cooperation. In this respect, there is a need to strengthen coordination and communication between the coordinating bodies for technical assistance and the national entities that provide or request such assistance.

In this way, we seek to ensure that technical assistance in Colombia operates in an efficient and coordinated manner among the parties. Donors and the country alike must try to ensure that the management of resources and the taking of decisions are oriented to producing results that will contribute to the development needs identified.

II. Mechanisms and criteria for evaluating the effectiveness of this assistance

The country has sought to promote and establish bodies for monitoring and evaluation throughout the course of technical assistance processes. Consequently, these activities are intended to provide the kind of monitoring that will allow progress to be evaluated in the different fields (in terms of execution and agreed development-oriented outcomes), to highlight successful experiments, to verify the

completion of activities and to analyse the problems that must be overcome in order to fulfil the parties' commitments.

In this way, we consider that the scenarios best suited to these activities are those that involve negotiation and coordination, both bilateral and multilateral.

III. Ways of promoting consistency among donors

It is important to seek alternatives with donor countries so that the financial and technical assistance offered by those countries is better coordinated with that provided by multilateral agencies such as the World Bank. Consequently, we are trying to help build mechanisms to combat the scattering of resources and technical assistance processes.

IV. Perspectives of recipient States

Recipients are committed to maintaining relations with donors based on non-interference and respect between the parties, as well as on solidarity, which is seen as a fundamental pillar in the exchange of experiences. In addition, they stress coordination among the parties in terms of the objectives that the assistance process seeks to meet.

The management of assistance must be geared towards seeking and consolidating relations not with donors but with partners, who are prepared to engage in the exchange of experience, resources, knowledge and good practices. Assistance must be channelled to key issues such as combating poverty, promoting knowledge, strengthening institutional capacities, technological modernization and business and productive development, and the exploitation and preservation of natural resources.

Such assistance must respond to real needs in terms of support for development. Thus, what is needed are processes that are more predictable, that can be accomplished in less time, and that entail lower transaction costs, which will be of great benefit to recipient countries.

Second submission

I. Legislation regarding the incorporation and implementation of international law in the Colombian legal system

The relation between international law and domestic law is one of the fundamental features of the international legal system. In some cases, international law is regarded as an autonomous branch of law; in others, it continues to be regarded as a peripheral body of law vis-à-vis the domestic legal system; and in some other cases international law becomes an integral part of the domestic legal system and even takes precedence over it.

The incorporation of international legal norms in the domestic legal system necessarily leads to examination of two factors: the acceptance and the ranking and scope these aspects may have are settled in accordance with the provisions of each State's constitutional mandates.

In the case of Colombia, the notion of incorporating international law, its ranking, and the way to resolve conflicts with the domestic legal system is

addressed in articles 4, 9, 53, 93, 94, 214, 224, 227 and 101 of the Political Constitution.

A. Acceptance of international law

To begin with, regarding the principles of international law, article 9 of the Colombian Political Constitution establishes the following:

> The external relations of the state are based on national sovereignty, on respect for the self-determination of peoples, and on the **recognition of the principles of international law approved by Colombia**. (bold added)

Therefore, assuming that the Colombian State has accepted said principles, they shall form part of the domestic legal system as set forth in the Charter of the United Nations and in General Assembly resolution 2525 (XXV) of 1970.

Accordingly, customary international law is automatically incorporated into the domestic legal system provided that Colombia has consented to the formation of the custom by not having engaged in conduct opposed to it or not having rejected its formation.

That said, as regards acceptance of international legal agreements, the Constitution provides for the participation of the three branches of government in the negotiation, adoption and ratification of treaties.

Concerning the formation and manifestation of the State's will to be bound by treaties, the Constitutional Court has stated the following:

> [Colombian constitutional law] establishes steps to be followed to guarantee full formation of the State's will, manifested by the three branches of government, to let itself be bound by international law. Thus, the will to conclude a treaty is expressed, first, in the initiative and negotiation of the President of the Republic as the Head of State and director of international relations; second, in the approval or disapproval of the Congress of the Republic; and, third, in the automatic review by the Constitutional Court prior to conclusion of the treaty. Then come ratification, the exchange of instruments and other formalities through which the treaty is concluded and consequently put into effect.[a]

The oversight exercised by the Constitutional Court over treaties concluded by the Colombian Government reiterates the supremacy of constitutional mandates. Consequently, Colombia cannot ratify any treaty at variance with the Political Constitution.

That said, once treaties have been ratified by the Colombian State, and because they have been adopted by a law of the Republic that has been declared enforceable by the Constitutional Court, they are incorporated into domestic law and constitute substantive law in force and applicable for all legal operators. On this, the Political Constitution establishes:

> Article 224. In order to be valid, treaties will have to be approved by the Congress. However, the President of the Republic may give temporary effect to [...] treaties of an economic or commercial nature, agreed upon in the

[a] Constitutional Court, judgement C-267 of 1993, P.M. Vladimiro Naranjo Mesa.

context of international organizations which so provide. In such a case, as soon as a treaty enters into force provisionally, it will have to be sent to the Congress for its approval. If the country does not approve the treaty, its application will be suspended.

Article 241. The safeguarding of the integrity and supremacy of the Constitution is entrusted to the Constitutional Court in the strict and precise terms of this article. For such a purpose, it will fulfil the following functions:

[...]

10. Decide in definitive manner on the feasibility of international treaties and the laws approving them. With such a purpose, the government will submit them to the Court within six days subsequent to the sanction of the law. Any citizen may intervene to defend or challenge their constitutionality. Should the Court declare them unconstitutional, the government may exchange comments; in the contrary case, the laws will not be ratified. When one or several provisions of an international treaty are declared invalid by the Constitutional Court, the President of the Republic alone may declare consent, prescribing the pertinent exception [...]

In addition, as a State party to the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, of 1986, Colombia must comply with the commitments undertaken therein by virtue of the principles of good faith and *pacta sunt servanda*.

B. Ranking of international law in domestic law

The Colombian legal system establishes the supremacy of the Political Constitution, that is to say, its provisions and mandates take precedence over other legal provisions and over administrative orders issued by organs of the State. Thus, according to article 4,

The Constitution provides the norm of regulations [*es norma de normas*]. In all cases of incompatibility between the Constitution and the law or other legal regulations, the constitutional provisions will apply [...].

However, article 93 of the same Constitution states:

International treaties and agreements ratified by the Congress that recognize human rights and that prohibit their limitation in states of emergency have priority domestically.

The rights and duties mentioned in this Charter will be interpreted in accordance with international treaties on human rights ratified by Colombia.

For its part, article 94 stipulates:

The enunciation of the rights and guarantees contained in the Constitution and in international treaties in effect should not be understood as a negation of others which, being inherent to the human being, are not expressly mentioned in them.

Based on those provisions, the Constitutional Court adopted the theory of the "constitutionality block of law" (*bloque de constitucionalidad*[b]), in accordance with which human rights treaties constitute a parameter of the constitutionality of laws and function as a benchmark for interpreting constitutional rights and duties. That is to say, these instruments are also norms and principles of constitutional value that condition the validity of the other domestic legal provisions.

To that end, the Court determines in each case whether the treaty under review can or cannot form part of the "constitutionality block of law" in order to establish, by that means, interpretation in accordance with the treaty, identify the existence of fundamental rights that are not contemplated in the Constitution and establish criteria for applying it, rather than domestic norms, in the event of a conflict between them.

In light of the jurisprudence developed by the Constitutional Court, the following treaties have been deemed to form part of the "constitutionality block of law":

- 1977 Geneva Protocol II (judgement C-225 of 1995)
- Articles 27.2, 8 and 9 of the American Convention on Human Rights (judgement C-200 of 2002)
- Articles 4 and 15.1 of the International Covenant on Civil and Political Rights (judgement C-200 of 2002)
- The Convention on the Rights of the Child (judgement C-1068 of 2002)
- The Inter-American Convention on International Traffic in Minors (judgement C-170 of 2004)
- International Labour Organization (ILO) Convention 87 concerning Freedom of Association and Protection of the Right to Organize (judgements C-567 of 2000, T-408 of 1992, C-225 of 1995 and T-568 of 1999)
- ILO Convention 98 concerning the Right to Organize and Collective Bargaining
- ILO Convention 138 concerning Minimum Age for Admission to Employment (judgements C-325 of 2000 and C-170 of 2004)
- ILO Convention 182 concerning Worst Forms of Child Labour
- ILO Convention 169 concerning the Indigenous and Tribal Peoples (judgements C-620 of 2003, SU-039 of 1997 and T-652 of 1998)

The Court also excluded from the "constitutionality block of law", inter alia, agreements on international trade, international cooperation, economic integration and diplomatic and consular relations.

The conclusion, therefore, is that in Colombia treaties do not take precedence over the Political Constitution and are not accorded constitutional status, except when, by virtue of the "constitutionality block of law" (articles 93 and 94), the Court expressly identifies those that are regarded as being of a constitutional nature

[b] Constitutional Court, judgement T-409 of 1992, P.M. José Gregorio Hernández, judgement C-225 of 1995, P.M. Alejandro Martínez Caballero.

and serving as models for the interpretation of legal provisions. Consequently, a treaty that is valid for Colombia cannot amend or repeal the Constitution.

Contrario sensu, some treaties do condition the validity of domestic legal provisions and constitute benchmarks for the interpretation of those norms, and in the event of a conflict between those treaties and a law, the provisions of the treaty shall take precedence, provided it meets the requirements for forming part of the "constitutionality block of law".

If a domestic law disregards a treaty ratified by Colombia that does not form part of the "constitutionality block of law", the treaty will take precedence because of the Colombian State's commitment to comply with the agreement in good faith, on pain of incurring international liability for having failed to fulfil its obligations.

C. *Final considerations*

In light of the above, although the Colombian Constitution provides the norm of regulations and therefore takes precedence over other domestic legal norms, it cannot be stated categorically that domestic law takes precedence over international law.

The provisions of the Constitutions, the jurisprudence of the Constitutional Court and Colombian State practice show close ties and interdependence between the two systems. They illustrate the importance that the State attaches to the observance and adoption of the general principles of international law, international custom and fulfilment of commitments undertaken in international agreements.

All of this is consonant with the commitments undertaken by the States Members of the United Nations when they unanimously agreed to honour the obligations deriving from treaties and other sources of international law, pursuant to the preamble of the Charter of the United Nations and, in addition, the Vienna Conventions of 1969 and 1986, which jointly stipulate that treaties must be fulfilled in good faith and that the parties may not invoke provisions of their domestic law to justify their non-compliance.

Cuba

[Original: Spanish]

Cuba wishes to emphasize that the purposes and principles of the United Nations Charter and the principles of international law are indispensable to the preservation and promotion of economic development and social progress, international peace and security, human rights for all and the rule of law. In this context, States Members of the United Nations must renew their commitment to defend, preserve and promote the Charter and international law.

The sovereign equality of States, compliance in good faith with the obligations assumed by States, the peaceful settlement of disputes so as not to endanger international peace and security and justice, abstention from the threat or use of force against the territorial integrity or political independence of any State, non-interference in the internal affairs of States, as well as non-selectivity in the application of international law are the basic principles to be followed by all States

in international relations. Respect for these principles will lead to proper compliance with the rule of law at the international level.

Cuba wishes to stress the need for States Members of the United Nations to fully respect the functions and powers of organs of the Organization, particularly the General Assembly, and to maintain the balance among these organs, with their respective functions and powers as laid down in the Charter.

Cuba reiterates its concern over the unilateral exercise of the extraterritorial criminal and civil jurisdiction of national courts not emanating from international treaties or other obligations of international law, including international humanitarian law. In this regard, Cuba condemns politically motivated national laws directed against other States and stresses the negative effect of such measures on the establishment of the rule of law at the international level. Cuba, therefore, demands the cessation of all such measures.

Cuba strongly opposes the unilateral evaluation and certification of the conduct of States as a means of exerting pressure on some developing countries. Cuba therefore believes that States should refrain from recognizing, adopting or applying extraterritorial or unilateral coercive measures or laws, including unilateral economic sanctions and other measures of intimidation.

Cuba considers that compliance by States with the obligations they have assumed under international treaties to which they are party is essential to help maintain the rule of law. States must adapt their domestic legislation to the international obligations they have assumed and refrain from violating the letter and spirit of those treaties. This will contribute to proper respect for international law.

Likewise, Cuba considers that the General Assembly of the United Nations must play the leading role in the promotion and coordination of efforts in this regard. However, the international community cannot replace national authorities in efforts to establish or strengthen the rule of law and must provide only the support needed, without conditions, when the authorities require it.

In that regard, Cuba considers it essential, with regard to assistance and cooperation, to take into account national customs and political and socio-economic realities and avoid pre-established models that could hinder the solution of the problems in each country.

Cuba wishes to reiterate that respect for the rule of law is an essential element for achieving peace and international security and economic development.

Czech Republic

[Original: English]

Laws and practices of the Czech Republic in implementing international law

This report is being submitted by the Czech Republic to the Secretariat of the United Nations pursuant to General Assembly resolution 64/116. The purpose of this report is to provide information on the laws and practices of the Czech Republic in implementing international law with focus, in particular, on the relationship between international law and national law in the Czech Republic. The structure of this report is based on Article 38 of the Statute of the International Court of Justice.

I. Relationship between international law and national law in the Czech Republic

According to article 1 of the Constitution (Act No. 1/1993), the Czech Republic is obliged to obey all its obligations arising from international law. This provision makes no distinction between the treaty and customary international law. Furthermore, article 10 of the Constitution explicitly states that:

> Promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply.

Therefore, the Czech Republic has to respect all international law principles, which may be derived either from the relevant treaties or the customary international law. According to article 95 of the Constitution, in their decision-making, judges are bound by the law and by the treaties forming part of the legal order. Any judge is entitled to assess the conformity of a different legal regulation with the law or with such international agreement. Should a court conclude that the law to be applied in deciding a case contravenes the constitutional order, it shall submit the issue to the Constitutional Court. Furthermore, the judges shall interpret the international law in accordance with the rules of the international law, taking into account the case law of relevant international courts, which exercise jurisdiction in relation to the Czech Republic.

II. Treaties

The general rules on the implementation of treaties are contained in the Constitution. In addition, more detailed provisions can be found in the Government Directive on the Negotiation, National Consideration, Implementation and Termination of Treaties that forms an annex to Czech Government Resolution No. 131 of 11 February 2004.

The Czech Republic distinguishes among three basic categories of treaties having different effect on the national legal order, i.e., presidential, governmental and ministerial treaties. The criteria for categorizing a particular treaty are specified in the Constitution. Each treaty category has its specific national negotiation and approval procedure. Under article 63, paragraph 1 (b), of the Constitution, the treaties are negotiated and ratified by the President of the Republic. Under this provision, the President of the Republic may delegate the negotiation of treaties to the Government and, with its consent, to individual members thereof.[c]

---

[c] The President of the Republic did so by decision 144/1993 of 28 April 1993, by which, with the reservation of another decision in individual cases, he delegated:
(i) the negotiation and approval of bilateral and multilateral international treaties that do not require the consent of the Parliament (so-called governmental treaties), the accession to such treaties and their adoption by the Government of the Czech Republic;
(ii) the negotiation and approval of bilateral and multilateral international treaties that do not exceed by their significance the scope of competencies of the central bodies of state administration, the access to such treaties and their adoption to a member of the Government responsible for the competent ministry or for another central body of state administration (so-called ministerial treaties).

The treaties under article 49[d] of the Constitution, incorporated into Czech law pursuant to article 10 of the Constitution, and treaties under article 10a[e] of the Constitution, incorporated into the Czech law pursuant to article 10 of the Constitution — with certain specifics that are anticipated in article 10a of the Constitution (in respect of the incorporation and effect of treaties under article 10a of the Constitution, article 10a is *lex specialis* to article 10 of the Constitution) — form part of the Czech legal order.

Article 10 of the Constitution is an incorporation clause providing for the conditions of incorporation and the effect of treaties, specified in article 49 of the Constitution, on the national legal order. The following three incorporation conditions are obligatory: (i) the Parliament gave its consent to the ratification; (ii) the treaty was promulgated at the national level, i.e. it was published in the Collection of Treaties; and (iii) the treaty is valid (the question of the validity of a treaty is regulated by international law).

In addition, the Constitution contains the fourth condition of incorporation, but this one is only facultative. If a petition is filed, prior to the ratification of a treaty, by the Chambers of the Parliament, 41 Deputies, 17 Senators or by the President of the Republic, for preliminary control of such treaty by the Constitutional Court, the Constitutional Court shall decide about its compatibility with the constitutional order (article 87, paragraph 2, of the Constitution).[f] The treaty may not be ratified before the decision by the Constitutional Court on this issue. There have been only two such cases, in 2008 and 2009. Both of them concerned the Lisbon Treaty amending the Treaty on European Union and the Treaty Establishing the European Community. The Constitutional Court stated that the Lisbon Treaty was in conformity with the Czech Constitution.

The result of the incorporation provision is that the treaties fulfilling its requirements are part of the legal order, although they remain a source of international law (i.e. the validity, interpretation, etc., of such treaties is subject to the rules of international law). The government bodies have the duty to implement such treaties into national laws or — if the individual provisions are "self-executing" (i.e. they directly impose on natural persons and legal entities the rights and duties) — to apply them directly. In relation to natural persons and legal entities, the interpretation of the provision of article 10 of the Constitution must,

---

[d] Article 49 states that the assent of both chambers of Parliament is required for the ratification of treaties:

(i) affecting the rights or duties of persons;

(ii) of alliance, peace or other political nature;

(iii) by which the Czech Republic becomes a member of an international organization;

(iv) of a general economic nature;

(v) concerning additional matters, the regulation of which is reserved to statute.

[e] Article 10a states that:

(i) Certain powers of Czech Republic authorities may be transferred by treaty to an international organization or institution.

(ii) The ratification of a treaty under paragraph 1 requires the consent of Parliament, unless a constitutional act provides that such ratification requires approval obtained in a referendum.

[f] Article 87, para. 2, states that prior to the ratification of a treaty under article 10a or article 49, the Constitutional Court shall further have jurisdiction to decide concerning the treaty's conformity with the constitutional order. A treaty may not be ratified prior to the Constitutional Court giving judgement.

therefore, be that the self-executing provisions of treaties take precedence over national law, if the law provides otherwise.

Article 10a of the Constitution is an integration clause providing for the entry of the Czech Republic into an international institution (e.g. the European Union) to which the Czech Republic transfers certain powers, or into an international organization (e.g. the International Criminal Court).

The obligatory conditions as well as the facultative condition of incorporation of a treaty, on the basis of which the Czech Republic enters into such international organization or institution, are identical to article 10 of the Constitution, the only difference being that besides by the Parliament, the consent to ratification may be given also through a referendum (the only referendum took place in case of the approval of the European Union Accession Treaty in 2003).

Articles 10 and 10a of the Constitution, however, do not cover all categories of treaties concluded by the Czech Republic. The other treaty categories are the so-called governmental and ministerial treaties that are not subject to consideration by the Parliament of the Czech Republic. These treaties may not establish directly the rights and duties of individuals and an individual cannot invoke them directly before the national authorities. As such, they are not part of the Czech legal order; nevertheless, they must be in accordance with this order.

A competent ministry designated for each treaty has to adopt measures in order to implement such treaty (and, when necessary, transpose the treaty provisions into national laws) and control compliance with the obligations arising from such treaty by the Czech Republic and other parties to the treaty. In case of deficiencies in the implementation or violation of a treaty by the other party, the competent ministry informs the Ministry of Foreign Affairs and proposes relevant measures to the Government, including a treaty termination.

III. Customary law and the general principles of law recognized by civilized nations

Except the general provision contained in article 1 of the Constitution (the Czech Republic is obliged to obey all its obligations arising from international law), there is no other concrete provision on the implementation of customary international law and the general principles of law recognized by civilized nations in the Czech legal system.

However, references to the respect for general international law can be found in some national laws, e.g. in the Act on Maritime Navigation (Act No. 61/2000), the Act on the Property of the Czech Republic and Acts Thereof in Legal Relations (Act No. 219/2000) and in the Act on Exploration and Exploitation of Mineral Resources from the Seabed Beyond the National Jurisdiction of States (Act No. 158/2000).

IV. Decisions of international courts and tribunals

According to articles 1 and 10 of the Constitution, the Czech Republic is obliged to implement a decision of an international court, which is binding for the Czech Republic. Furthermore, article 87, paragraph (l)(i), of the Constitution states that the Constitutional Court has the jurisdiction to decide on the measures necessary to implement a decision of an international court which is binding for the

Czech Republic in the event that it cannot otherwise be implemented. This article is particularly relevant for the decisions of the European Court of Human Rights.

V. Security Council decisions under Chapter VII of the United Nations Charter

The sanctions imposed by the Security Council of the United Nations and sanctions approved by other international bodies (e.g. the European Union) are implemented into the Czech legal order by the Act on Implementation of the International Sanctions No. 69/2006 and through other special laws.

VI. Dissolution of the former Czechoslovakia in the light of its legal order

In conformity with the valid principles of international law and to the extent defined by it, the Czech Republic, as a successor State to the Czech and Slovak Federal Republic, considers itself bound, with effect from 1 January 1993, i.e. from the date of establishment of the independent Czech Republic, by the treaties that were binding on the Czech and Slovak Republic on the date of its dissolution, i.e. on 31 December 1992.

Democratic Republic of the Congo

[Original: French]

Views of the Democratic Republic of the Congo on the laws and practices of Member States in implementing international law

The rule of law at the national and international levels

1. Laws and practices bearing on the application and interpretation of international law on a national scale

1.1 International law is made up of various legal instruments on human rights and international humanitarian law which have been ratified by the Democratic Republic of the Congo. These include:

- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention on the Rights of the Child;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The International Convention on the Elimination of All Forms of Racial Discrimination; and
- The Rome Statute of the International Criminal Court.

1.2 Application of laws. Primarily, this entails bringing into line and harmonizing the provisions of our internal legislation with the pertinent provisions of international legal instruments:

- The Constitution of 18 February 2006, which contains a title on basic rights and which incorporates provisions of international legal instruments. Article 215 of the Constitution gives greater authority to international agreements and treaties than to internal legislation;
- The law on the status of magistrates;
- The law on the Supreme Council of Justice;
- The 2009 law on the protection of the child;
- The draft law on gender parity in Government;
- The draft law on the implementation in Parliament of the Rome Statute of the International Criminal Court;
- The proposed law on the criminalization of torture adopted by the Senate;
- The proposed law on the national commission on human rights in Parliament;
- Two 2006 laws against sexual violence;
- The 2009 decree creating a human rights liaison unit; and
- The 2009 decree creating an agency to combat violence against women.

The penultimate paragraph of article 153 of the Constitution requires courts and civilian and military tribunals to apply duly ratified international treaties as well as the laws and regulations related to them.

1.3 Practices. Primarily, these entail:

- Submission of periodic reports to United Nations treaty monitoring bodies;
- Cooperation with the International Criminal Court: implementation of three mandates and extradition of three wanted persons: Democratic Republic of the Congo: model student;
- Cooperation with the International Court of Justice;
- Organization of public outreach campaigns and training seminars on international human rights standards and international humanitarian law;
- A "zero-tolerance" policy initiated by the Head of State in all areas: combating impunity in general and sexual violence, corruption and other negative values in particular;
- Recruitment of 2,000 magistrates;
- Measures to clean up the judiciary: dismissals, reassignments and placement of magistrates;
- Dismissals within the administration;
- Organization of trials to combat sexual violence and the arrest of certain senior military figures suspected of sexual violence and other crimes; and
- Reform of the police and of the army.

2. Strengthening and improving the coordination and harmonization of technical assistance and capacity-building in that area

2.1 Coordination and harmonization of technical assistance. Technical assistance is coordinated and harmonized at the level of the Ministry of Justice and Human

Rights, where a forum called the Joint Justice Committee has been set up to facilitate dialogue between the Ministry and donors, co-chaired by the Minister for Justice and Human Rights and the head of the European Union delegation. A ministerial decree of 27 April 2009 formally set up the Committee for the purpose of consolidating the coordination of initiatives to support and reform the administration of justice. Tools for coordinating interventions in the justice sector are the Action Plan for Justice Reform and the 2009 Road Map. Sources include the Constitution of 18 February 2006; the Government's governance contract; the Growth Strategy and Poverty Reduction Document emphasizing good governance in all sectors, especially justice; the Office of the President of the Republic's March 2007 terms of reference for good governance, and the social project of the head of State. The Ministry's missions include combating corruption, malfeasance and diversion of public funds; combating sexual violence and impunity in general; reform of justice; and the promotion and protection of human rights.

The Ministry of Justice and Human Rights also works in other capacities to coordinate aid in sectoral areas to combat impunity, especially the STAREC programme aimed at stabilizing the east of the country and coordinated at the level of the Presidency of the Republic and the Prime Minister.

2.2 Capacity-building. Institutional as well as human capacities are strengthened through:

- Training of magistrates and judicial staff;
- Rehabilitation of judicial and prison infrastructure;
- Equipment; and
- Construction of prisons and trial facilities.

3. Mechanisms and criteria for evaluating the effectiveness of this assistance

- Follow-up and evaluation are the responsibility of the Joint Justice Committee, which prepares an annual assessment of accomplishments and has recourse to external evaluations when needed. There are also project guidance committees and technical committees, as well as local consultation and coordination committees at the grass-roots level;
- All these structures hold assessment meetings;
- Best practices include: Government leadership in the process of coordinating and managing reform with actors on the ground; the responsibility of the Government and those in the justice area for implementing reform; honest collaboration among partners; harmonization of donor practices around a single programme and of Government policy; and the alignment of donor activities with Government policy.

4. Ways to improve coherence between donors and the perspectives of beneficiary States

- Working on technical aspects;
- Not ignoring local skills and not acting as a teacher all the time;
- Examining and taking into account the social and work factors motivating local partners;

- Giving local partners more responsibility for follow-up and control;
- Involving local partners in the choice of experts for greater transparency and assurance;
- Covering the national territory (tendency to go farther east); and
- Avoiding delays in making funds available (argument given: procedures to follow).

Italy

[Original: English]

Information from the Permanent Mission of Italy to the United Nations on the laws and practices of Member States in implementing international law

A. Adaptation to customary international law

The Italian legal system, as with the majority of Western European systems, links the "transformation" of an international law into a domestic one to a possible juridical effect on relations between State organs and individuals as well as between individuals. While this transformation is provided by article 10, paragraph 1, and article 11 of the Constitution for general international law, it refers to the institutional practice for treaties and for sources deriving from treaties, with modifications ensuing from the reform of title V of the Constitution pursuant to constitutional law No. 3 of 2001 and of law No. 131 of 2003.

According to article 10, paragraph 1, of the Constitution: the Italian legal system complies with the generally recognized provisions of international law. This provision establishes what can be called an automatic adaptation of domestic law to general international law, and thus appears to be strongly hinged on the principle of international law. In other words, as international law introduces new precepts, these, by virtue of article 10, paragraph 1, of the Constitution, are transformed into domestic Italian law.

B. Rank of international customary law

According to article 10 of the Constitution, general international law has the rank of constitutional law. Thus, Italian constitutional law encompasses constitutional norms and the norms of international law. Customary international law is hierarchically superior to the statutory laws of the State.

C. The adaptation of conventional international law

Article 10, paragraph 1, of the Constitution, does not refer to international treaty law. It is undeniable, however, that said article obliges legislative bodies to adapt one's domestic legal system to conventional international law, as it inserts in the Italian law the customary norm: "*pacta sunt servanda*". No laws regulating the adaptation of treaties is contained in any other constitutional or statutory law. To adapt international treaties, a parliamentary practice has been developed through the adoption of executive orders. As regards non-self-executing norms, the ordinary procedure applies.

D. The rank of treaties

With reference to the issue of the rank of international treaties introduced into a State's legal system, it must be observed that the rank they assume is that of the legal instrument used for their adaptation. This does not, however, apply to those treaties that, despite being introduced via statutory law, are somewhat grounded in the Constitution. This is the case for treatment of the status of a foreigner, because paragraph 2 of article 10 of the Constitution states that the legal status of a foreigner is governed by the law in compliance with international laws and treaties, and for the treaty implementing article 11, which states that Italy rejects war as an offensive instrument against the freedom of other peoples and as a means of settlement of international disputes; it allows for, on an equal footing with other States, the necessary limitations of sovereignty for a legal system that can ensure peace and justice among nations, and promotes and supports the international organizations dedicated to this purpose. These are treaties that establish international organizations for the above-mentioned purposes. The rank of the international agreements within the Italian legal system stems from article 117, paragraph 1, of the Constitution and from article 1, paragraph 1, of law No. 131 of 2003. The first law establishes that legislative powers are exercised by the State and the regions in respect of the Constitution, and of the obligations deriving from community laws and international obligations, whereas the second law more explicitly establishes that binding obligations for the legislative powers of the State and regions, pursuant to article 117, paragraph 1, of the Constitution, are obligations deriving from generally recognized regulations of international law, pursuant to article 10 of the Constitution, from agreements on the mutual sovereignty limitations, as per article 11 of the Constitution, from the European Community legal system and from international treaties.

It must be specified, however, that these treaties do not become constitutional, as with general international law, since article 117, paragraph 1, does not create an automatic procedure of adaptation. The treaties mentioned become as legally effective as laws that permitted their adaptation into domestic law. It is a statutory law that has a legal basis in the Constitution, as an instrument of implementation of the same constitutional provisions. As a consequence, the contrast between subsequent legislation and the said categories of treaties causes an indirect violation of the pertinent orders of the Constitution and thus the consequential constitutional illegitimacy of such subsequent legislation. At the same time, as these treaties are effective as statutory laws, they must, as any other law with the same juridical force, be compliant with the Constitution and thus be submitted for examination of the Constitutional Court.

E. The adaptation of acts of international organizations

Many of the considerations previously made for the adaptation of treaties can apply to the adaptation within the Italian legal system of acts of international organizations, which are legally binding and do not belong to the category of soft laws. The issue of adaptation of a European Union (EU) law, however, has become autonomous in regulatory and interpretative terms. More precisely, in the absence of a specific provision of the international organization's founding treaty in terms of its immediate effectiveness, the treaty must be introduced by way of an executive order or through an adaptation procedure. The latter solution occurs more frequently, as these documents are often incomplete and thus need to be integrated by State rule.

F. The rank of the acts of international organizations

With regard to the rank of acts of international organizations, unlike those derived from community law, and especially deliberations of the United Nations Security Council in the field of peacekeeping and international security, they may be deemed "constitutionalized" by article 11 of the Constitution. For other international organizations, with the exception of the European Union, the above-mentioned reference to the international agreements may be applied.

Strengthening and improving coordination and coherence of technical assistance and capacity-building in this area, mechanism and criteria for evaluating the effectiveness of such assistance, ways and means of advancing donor coherence

In general, the orientation of the international community in the field of development policies tends to highlight more and more the importance of mechanisms, criteria and principles to assess the efficacy of development action. This orientation, based on the milestone of the first high-level forum on the harmonization of donor policies and procedures (2003), organized by Italy, the World Bank, and by the Development Aid Committee of the Organization for Economic Cooperation and Development, has been strengthened through the years, as has the need to augment the impact of public aid on development in developing countries. This need has led, following the second (Paris, 2005) and third (Accra, 2008) high-level forums, to a series of principles on the efficacy of development aid: ownership of a country's own development processes, the alignment of strategies among donors for developing countries, harmonization among donors, management based on results and mutual responsibilities between donors and developing countries. These are indeed principles that flank the new international trends in development financing, according to the Monterrey Consensus of 2002 and the Doha Declaration of 2008, which tend to not limit resources, channelling them only towards public development aid for developing countries, but expanding them so that they may mobilize domestic resources and international trade and attract foreign investment.

Based on these new orientations, there is a fundamental assumption of stability of institutions in the developing countries and the guarantee of an adequate level of rule of law that will allow them to face the challenges of development in coordination with their donors.

Italy has, from the very start, supported the cause for both greater aid effectiveness for development and for adopting a new approach, encompassing all possible financial sources (defined as "holistic" or "whole-country approach", meaning all-encompassing). In particular, Italy, besides having promoted the first forum on aid effectiveness, was one of the few initial EU Member States to approve a national programme on aid effectiveness, which is currently under way.

Also in terms of donor coherence (which reflects the above-mentioned principle of harmonization), Italy has made much progress. In particular, it is actively participating in a work distribution process within the EU, which consists in coordinating European donors to streamline aid into country sectors or into geographical areas (cross-country). Italy, on the basis of a harmonization of priorities in operating in certain fields in certain developing countries with those of other EU donors, has taken on the role of facilitator in the work distribution process of a few developing States, among which are Albania, Ethiopia, Mozambique, Kenya and Bolivia.

The need for greater coherence among donors also stems from the will to avoid the emergence of what are known as "orphan States", which are bereft of development aid altogether. The exclusion of a few developing countries from the flow of international aid only worsens the already fragile rule of law within them, heightening the risk of further destabilization. Greater coherence among donors, on the other hand, would enable developing countries to gain benefits for the rule of law, in terms of a greater political dialogue among their own institutions, as well as greater transparency and fewer risks of corruption.

Mexico

[Original: Spanish]

I. Legislation and practices relating to the implementation and interpretation of international law at the national level

(a) The hierarchy of international treaties in Mexican law

Section 133 of the Constitution of the United Mexican States (CPEUM) establishes the hierarchy of rules of Mexican internal law, providing that:

> This Constitution, the laws of the Congress of the Union that emanate therefrom, and all treaties that are in accordance therewith, entered into or to be entered into by the President of the Republic with the approval of the Senate, are the supreme law of the entire Union.

As is stipulated in article 76, section I, of the CPEUM, for an international treaty to have the status of Mexican internal legislation, it must be approved by the Senate and its content must not run counter to the provisions of the CPEUM.

In recent years, Mexico's Supreme Court has defined the hierarchy of international treaties and other general federal legislation relating to Mexico's constitutional order by interpreting the meaning of article 133 of the Constitution in its jurisprudence IX 2007 of April 2007, thus:

> International treaties are an integral part of the basic law of the Union and take precedence over general federal and local legislation. Interpretation of article 133 of the Constitution.

Hence, the Mexican Supreme Court has held that international treaties take precedence over general laws, whether federal or local, and so are second only to the CPEUM.

The Supreme Court decided to recognize the hierarchy of international treaties based on the argument that the Vienna Convention on the Law of Treaties provides that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty and, additionally, imposes as part of the fundamental law of treaties the *pacta sunt servanda* rule. Accordingly, the Court found that to grant internal laws legal status equal or superior to that of international treaties would violate both principles; but since both are international commitments of Mexico, such status would be inconsistent with the goal of harmonizing internal and international law.

(b) Implementation of treaties in internal law

Our country has in principle adopted an automatic way of incorporating international treaties into its domestic legal system, as once the treaty signed by the President of the Republic has been approved by the Senate, ratified by the Executive in the presence of the international community and published in the Official Journal of the Federation, it is enforceable, and its provisions become mandatory rules of internal law.

Sometimes, however, for the content of a treaty to be enforced before national courts it must be incorporated into a secondary law or regulation. Hence, not all treaties are self-executing in the Mexican legal system. A case in point is treaties on human rights, such as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. In the case of the latter two instruments, secondary legislation needed to be developed that could be implemented by Mexican judicial authorities.

(c) Training of judges in the application of international law

The Federal Judicial Institute annually organizes courses, diploma programmes and training conferences for judges and magistrates of the federal judiciary. Over the past three years the following training activities for judges and federal judges have been held in the area of international law and its embodiment in internal law:

Year	*Training type*	*Session type*	*Duration*
2007	Diploma in International Human Rights Law	Face-to-face	March to November 2007 (104 hours in 31 sessions)
2008	Lecture series commemorating the 60th anniversary of the Universal Declaration of Human Rights	Distance	1 to 4 September 2008 (8 hours in four sessions)
2009	Teacher training course in international human rights law	Face-to-face	17 August to 7 November 2009 (160 hours)

Portugal

[Original: English]

I. Introduction

Pursuant to General Assembly resolution 64/116, the Secretary-General invited Member States to submit information on laws and practices in implementing international law.

Portugal is strongly committed to the work of the United Nations on the strengthening of the rule of law at national and international levels. Respect for the rule of law is the cornerstone for the peaceful coexistence of nations and an essential prerequisite for relations among States, international organizations or individuals. In a globalizing world, the rule of law at the national and international

levels is even more a necessary condition for the interaction of States and their societies and an essential condition for peace and stability. The adherence to the rule of law is critical to conflict prevention, stabilization, recovery and reconstruction of fragile and conflict-affected environments, as well as to long-term sustainable development.

II. Relevant legal norms

The Portuguese Constitution expressly states that international law is a source of law.

Article 8 of the Constitution provides that the rules and principles of general international law shall form an integral part of Portuguese law. Regarding treaty law, it says that the rules set out in international conventions duly ratified or approved shall come into force in the Portuguese internal legal order once they have been officially published, and shall remain so for as long as they are internationally binding for the Portuguese State. Additionally, it states that rules issued by the competent bodies of international organizations to which Portugal is a member shall come into force directly in Portuguese internal legal order, on condition that this is laid down in the respective constituent treaties. Finally, it states that provisions of the Treaties that govern the European Union and the rules issued by its institutions in the exercise of their respective competences shall apply in the Portuguese internal legal order in accordance with the European Union law and with respect for the fundamental principle of the democratic State based on the rule of law.

Portugal does not have a law on treaty binding procedures. The relevant legal provisions on the subject may be found in the Portuguese Constitution, in the Vienna Convention on the Law of Treaties, in the organic law of the Ministry of Foreign Affairs, in the law on publication and in several resolutions of the Council of Ministers.

III. Practice regarding the binding to international conventions

(a) Terminology

The term "international convention" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. According to the Constitution terminology, the notion of international convention encompasses the categories of "solemn treaties" and "agreements in simplified form". The distinction between the two categories is made according to the dignity of the content of the convention.

(b) Negotiation

The Ministry of Foreign Affairs is responsible for conducting international negotiations and holds the competence for the international and internal process aimed at binding the Portuguese Republic. The other ministries are responsible for internal government initiatives and for participating in the negotiation, in a complementary way and at a technical level, in constant coordination with the Ministry of Foreign Affairs.

The beginning of the negotiations can occur only after the issuance of a favourable political opinion by the Ministry of Foreign Affairs. The negotiations

will be coordinated by the competent department of the Ministry of Foreign Affairs in coordination with other relevant ministries.

(c) Consent to be bound

After the signature, for the expression of the consent of the Portuguese Republic to be bound to an international convention approval is required from the national competent organ, the presidential ratification in the case of solemn treaties and its publication.

The relevant department of the Ministry of Foreign Affairs will organize the process for approval.

The power to approve the convention varies according to the content of the international convention. Thus, when an agreement in simplified form is concerned, the approval is for the Assembly of the Republic (the Parliament) if that instrument relates to matters of relative or absolute reserved competences of the Assembly, or if the Government submits it for consideration and approval to the Assembly. The Government has competence for the approval of conventions not submitted to the Assembly. In the case of a solemn treaty, it has to be approved by the Assembly. Once approved, the treaty is subject to ratification by the President of the Republic.

After the presidential intervention and the ministerial referenda by the Prime Minister, the convention as well as other notices relating to it should be published.

(d) Entry into force

An international convention enters into force in the manner (and on the date) specified in the text.

It is for the competent department of the Ministry of Foreign Affairs to notify the authorities of the other contracting States that all internal procedures aimed at the expression of the consent to be bound by the Portuguese Republic to the international convention have been met. The notification can take several forms: in the case of international bilateral conventions, a note verbale; in the case of multilateral international conventions to which a depositary is designated, an instrument of approval (agreement) or an instrument of ratification (treaty). The notification can assume any other specific form that may be determined by the international convention (e.g. exchange of instruments of ratification or approval).

The entry into force should be published through a notice in the official gazette.

(e) Registration

After the entry into force of the international convention, unless a depositary has been designated or the parties have agreed otherwise, it is up to the competent department of the Ministry of Foreign Affairs to transmit the international convention to the Secretariat of the United Nations for registration and publication.

(f) Reservations

A reservation made by the Portuguese Republic at the time of signature or at the time of expression of its consent to be bound by the international convention

follows the same procedures as for the international convention. Thus it must follow the same process for approval, ratification (if necessary) and publication.

Slovenia

[Original: English]

I. Hierarchy of International Law in the Constitutional Order of the Republic of Slovenia

The Republic of Slovenia, founded on the principle of the rule of law enshrined in its Constitution, is strongly committed to the promotion and strengthening of the rule of law with the aim of reaching universal adherence to and implementation of the rule of law at both the national and international levels. In the Constitution of the Republic of Slovenia, international law is placed above domestic law and legislation. Article 8 states that laws and regulations must comply with the accepted principles of international law and international treaties binding on Slovenia. The article entitled "International Law" reads as follows:

> Article 8
>
> International Law
>
> Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.

Other articles of the Constitution touch upon international law in its various aspects: article 3a (inserted into the Constitution by virtue of a constitutional amendment in 2003), article 47 (Extradition), article 153 (Conformity of Legal Acts), article 160 (Powers of the Constitutional Court) and article 107 (Powers of the President of the Republic).

Article 3a deals with the transfer of part of sovereign rights to an international organization which is based on respect for human rights and fundamental freedoms, democracy and the principle of the rule of law. It was added to the Constitution by the Constitutional Act Amending chapter I and articles 47 and 68 of the Constitution of the Republic of Slovenia. It was adopted on 27 February 2003 and entered into force on 7 March 2003. Paragraph 1 of the article reads as follows:

> Article 3a
>
> 1. Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organizations which are based on respect for human rights and fundamental freedoms, democracy, and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values.

Article 3a, which has been added to the Constitution primarily for the purpose of accession to the European Union and the North Atlantic Treaty Organization, also extends to organizations, such as the International Criminal Court. For the purpose of becoming a contracting party to the Rome Statute of the International Criminal Court, Slovenia amended article 47 of the Constitution dealing with extradition. The current text of article 47 reads as follows:

Article 47

Extradition

No citizen of Slovenia may be extradited or surrendered unless such obligation to extradite or surrender arises from a treaty by which, in accordance with the provisions of the first paragraph of article 3a, Slovenia has transferred the exercise of part of its sovereign rights to an international organization.

Article 153, which provides for the conformity of legal acts (hierarchy of legal acts), in paragraph 2, establishes the rule that laws must be in conformity with generally accepted principles of international law and valid international treaties ratified by the Parliament, whereas regulations and other general acts must also be in conformity with other ratified international treaties. The power to ratify an international treaty is vested in the Parliament or the Government. Specific rules are set out in the Foreign Affairs Act.

Article 160 of the Constitution, which establishes the powers of the Constitutional Court, states, in paragraph 2, that the Constitutional Court decides on the conformity of laws and other regulations with ratified treaties and with the general principles of international law. Among the powers of the President of the Republic, article 107 of the Constitution lists the instruments of ratification.

II. International law in judicial practice

As mentioned under section I, the Constitutional Court decides on the conformity of domestic law and other legislation (regulations, decisions) with the general principles of international law and ratified international treaties. In recent years it has adopted various decisions directly related to the conclusion or ratification (approval) of an international treaty. This decision is taken before the signing of the international treaty or before or during the ratification procedure. In some cases, it has delivered opinions or decisions on other issues of or related to international law. Among those, the majority concern the questions of succession of States relating to the former Socialist Federal Republic of Yugoslavia (issues of property rights, hard currency savings, etc.) or are related to the implementation of the law on restitution of property nationalized in the former Yugoslavia. In one case it issued the opinion on the possibility of a foreign State to be subject to a lawsuit before the court in Slovenia (questions of jurisdictional immunity of the State).

III. Conclusion of international treaties in Slovenian national law

As stated under Section I, the Slovenian Constitution provides for international treaties to form part of Slovenian domestic law and to be above national laws and other domestic legislation. Ratified and published international treaties are directly applicable. The procedure to conclude an international treaty is set out in Part V of the Foreign Affairs Act, which comprises three major parts. The first part comprises a general provision on international treaties (based on the provision of Article 2 of the Vienna Convention on the Law of Treaties) and provisions on the conclusion of a treaty (initiative, signature, full powers to sign), the second part relates to the procedure of ratification (articles 75-79) and the third part includes provisions relating to other questions of international treaties (succession, implementation, amendments, and application of provisions mutatis mutandis). An opinion on whether an international instrument is an international treaty is given by the Ministry of Foreign Affairs before commencement of the procedure to conclude

such an instrument. Article 72 contains a provision on provisional application of a treaty before its entry into force. Such application is possible only if the ratification of such a treaty falls within the competence of the Government. As a general rule, it is within the competence of the National Assembly to ratify (approve) international treaties. Only by way of exception does paragraph 5 of article 75 provide for the competence of the Government to ratify a treaty by virtue of a government decree. Article 74 includes a provision on reservations and objections to reservations. The authority competent to ratify an international treaty decides on reservations to the treaty and on the withdrawal of such a reservation. The same applies to an objection to the reservation and its withdrawal. Paragraph 2 of the same article states that reservations to international treaties on human rights, which do not include provisions on reservations, are inadmissible. Particularly relevant for these issues is article 87, which deals with the non-conformity of international treaties with domestic legislation. If the provisions of an international treaty do not conform to the law or other regulations, the Government shall initiate a procedure for amending the law or other regulation, or for amending or terminating the treaty concerned. Pending the decision of the competent body, the international treaty shall be applied. In practice, such cases are extremely rare, as before starting negotiations or before signing the treaty, an assessment has to be made on the effect of the treaty on domestic legislation (whether a new or amended law or other legislation has to be adopted for the implementation of the treaty).

IV. Assistance in the field of international law

Slovenia is offering assistance on various questions regarding international and European Union law. The assistance is based on bilateral agreements on development assistance or on assistance in European Union matters concluded with several States. To a large extent, assistance is provided to countries in the Western Balkans and Eastern Europe. In May 2007, a very well-attended seminar was organized in Slovenia entitled "Capacity-building workshop on treaty Law and practice and the domestic implementation of treaty obligations for the South-Eastern Europe/Western Balkans Region", which was hosted by the Slovenian Ministry of Foreign Affairs in collaboration with the Treaty Section of the United Nations Office of Legal Affairs, the United Nations Commission on International Trade Law secretariat/International Trade Law Division of the Office of Legal Affairs and the United Nations Office on Drugs and Crime. The success of this event strengthened Slovenia's conviction in the usefulness and benefits of this kind of assistance and recommends such activities to other Member States.

In March 2009, the International Law Department of the Foreign Ministry organized a workshop on European Union law, with an emphasis on the questions of public international law, international criminal law and restrictive measures/sanctions and their implementation in domestic law. The Ministry of Foreign Affairs is currently planning such activities for the following years.

Switzerland

[Original: French]

Switzerland transmitted the following publications:

1. Swiss Agency for Development and Cooperation, "Challenging Common Assumptions on Corruption and Democratisation"

2. Blaise Bonvin, "Corruption: between perception and victimisation: policy implications for national authorities and the development community"

3. Wolf Linder, André Bächtiger and Georg Lutz, "Democratisation, rule of law and development"

4. Swiss Agency for Development and Cooperation concept paper, "Rule of law, justice sector reforms and development cooperation"

5. Report of the Federal Council on the relation of international law to domestic law of 5 March 2010, the official abstract of which is presented below:

The current report has been prepared in response to two postulates from the Legal Affairs Committee of the State Council and the Political Institutions Committee of the National Council, respectively. It addresses the relationship between domestic and international law, specifically the relationship between popular initiatives and international law. The latter issue is all the more relevant since there is an increasing number of popular initiatives which are contrary to international law.

The status of international law vis-à-vis domestic law is determined by three tests. The first test is whether the norms of international law are directly applicable in domestic law (monist system) or whether they must first be incorporated into domestic law (dualist system). A second test is whether the courts may apply the norms of international law directly or through parliamentary legislation. A third test is whether domestic law takes precedence over international law or the other way around.

The State approach to the issue does not lend itself to easy description. The rules of international customary law and the general principles of law are directly applicable even in dualist States. On the other hand, many monist States impose restrictions on the direct application of international norms such that parliamentary legislation is in any case necessary if such norms are to apply domestically, which ultimately amounts to a doctrine of transposition. No State gives unrestricted precedence to the primacy of international law over domestic law; there are mechanisms in place to balance competing interests in case of a conflict of norms. To the extent possible, efforts are made to avoid inconsistencies by interpreting domestic law in a manner congruent with international law.

Switzerland's approach to the place of international law under domestic law is not unlike that of other States, as is also reflected in Schubert. What sets Switzerland apart from other States are the popular initiatives, a uniquely Swiss phenomenon.

As a monist State, Switzerland accepts the direct applicability of the norms of international law, to the extent that such norms are specific enough to serve as a basis for a decision on a specific case. As a matter of principle, international law takes precedence over Swiss law; conflicts of norms are avoided to the extent that domestic law is interpreted in keeping with international law. However, the Federal Assembly may deliberately make exception to the norms of international law, in which case — as in Schubert — the Federal Court is bound by the decision of Parliament under the separation of powers doctrine. However, internationally recognized fundamental rights, including the European Convention on Human Rights, are not derogable.

There is no distinct advantage from setting aside the monist system. A dualist system would not absolve Switzerland from its obligation to live up to its

international commitments. Making Schubert the law of the land would prevent the Federal Court from carefully balancing the competing interests in individual cases and developing its jurisprudence in this area as it currently does. As to the suggestion that there be afforded a redress to the Federal Court against all decisions relating to the relation of international law to domestic law, it would run counter to efforts made to unburden the Federal Court, not to mention that why the latter would review without exception all appeals relating to that issue but not those relating to violations of constitutional rights is unclear. The issue of a possible extension of constitutional jurisdiction is not addressed in this report. It may be addressed in the context of the Studer Heiner 05.445 and Müller-Hemmi 07.476 parliamentary proposals.

As to the issue of conflicts between certain popular initiatives and international law, which is a uniquely Swiss problem, such initiatives may be struck down only if they violate peremptory norms of international law, which include a small set of fundamental norms, such as the prohibition of genocide, torture or slavery. Since the 1990s, there has been an increasing number of popular initiatives which are contrary to other norms of international law; these must be struck down. The issue is how to address the inconsistency with international law when they are being implemented. That issue has been thrust to the fore in the wake of the adoption of the popular initiative against the construction of minarets.

In practice, the Federal Assembly strives to implement such initiatives in a manner consistent with international law while complying as much as possible with the will of their backers. Wherever possible, non-conforming treaties should be renegotiated or denounced.

Very seldom has our decades-old system given rise to serious problems. In most cases, it affords the Federal Assembly adequate room to find a satisfactory solution. In the opinion of the Federal Council, there is no need to overhaul the current system. However, it recognizes that the popular initiatives which are in violation of international law raise some issues. The challenge therefore is whether the validity or implementation of popular initiatives should be made contingent on compliance with strictures other than compliance with the peremptory norms of international law. A broad test such as "norms of vital national interest" would be too vague. To include the reasons of invalidity of procedural guarantees and the fundamental rights enshrined by international law, or to list the relevant norms or treaties, such as the key provisions of the European Convention on Human Rights, would be just as problematic. The fact of the matter is that such tests raise numerous legal and political questions. In any case, they are not relevant to finding a simple short-term solution to the conflict between popular initiatives and international law. However, the Federal Council does not wish to rule out such approaches. In its opinion, it is useful to further consider the consequences of such approaches and to assess their feasibility. Therefore, it will direct the Federal Office of Justice, the Department of Public International Law and the Federal Chancellery to review these issues.